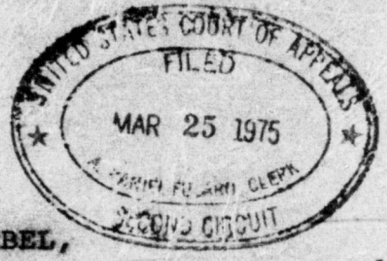
United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

74-2698

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



BUFFALO FORGE COMPANY,

Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, I. W. ABEL, as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO, VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO, KERMIT HASELEY, Individually and as President, and ALFRED LIGAMARRI, Individually and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,

Defendants-Appellees

APPEAL FROM AN INTERLOCUTORY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

Plaintiff-Appellant Buffalo Forge Company (hereafter "Buffalo Forge") has appealed from an interlocutory order rendered on December 13, 1974, by District Judge John T. Curtin of the United States District Court for the Western District of New York denying Buffalo Forge's motion for a preliminary

injunction. The case itself, arises under Section 301 of the Labor Management Relations Act, 1947, as amended, 29 U.S.C. § 185 (hereafter "Section 301"), but the jurisdictional prohibitions of the Norris-LaGuardia Act, 29 U.S.C. § 101, et seq. (hereafter "the Act"), are central to its proper disposition because the Complaint primarily seeks injunctive relief against a strike in a labor dispute and only secondarily seeks an award of compensatory damages for an alleged breach of contract (Att. B at 8-9).[1/]

In the District Court, Buffalo Forge sought the issuance of a Boys Markets[2/] injunction against its Production and Maintenance employees which would have effectively prohibited them from making common cause with their fellow Office and Technical employees who were engaged in an admittedly lawful strike for the purpose of securing an initial collective bargaining agreement from Buffalo Forge. The Production and Maintenance employees were refusing to cross the admittedly lawful Office and Technical picket line, and Buffalo Forge protested this action as contrary to the no-strike commitment

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1/ In compliance with the requirements of Rule 30(a) of the Federal Rules of Appellate Procedure, a copy of the Docket Entries and a copy of the Complaint (Exhibit B is omitted) are attached to this Brief as Attachment A and Attachment B respectively.

2/ Boys Markets, Inc. v. Retail Clerks, Local 770, 398 U. S. 235 (1971).

contained in the valid contracts which covered the Production and Maintenance employees. Buffalo Forge ignored an offer to proceed to arbitration on one day's notice over the "no-strike" clause issue and filed its lawsuit, apparently preferring initial judicial succor to final arbitral resolution. However, upon finding that the federal policy favoring arbitration of labor disputes was not involved, the District Court heeded the jurisdictional prohibitions of the Norris-LaGuardia Act and denied injunctive relief thereby refusing to take sides in this labor dispute. During the course of this appeal, the Office and Technical picket lines were withdrawn and have not been reestablished.

COUNTERSTATEMENT OF ISSUES

"Whether the District Court erred in holding that the Norris-LaGuardia Act jurisdictionally barred the issuance of an anti-strike injunction when the District Court had also determined that the strike sought to be enjoined was not over a grievance subject to resolution through the mandatory contract arbitration procedures."

"Whether Section 8 of the Norris-LaGuardia Act precludes the issuance of a Boys Markets injunction where a company has ignored an offer to immediately arbitrate the contractual validity of a sympathy strike."

COUNTERSTATEMENT OF FACTS

The facts of this case are restated herein both for emphasis and to supply certain important facts omitted from Appellant's Statement of Facts.

The parties to this litigation do not include all the principals involved in this labor dispute who are as follows: the plaintiff company, Appellant Buffalo Forge; the defendant unions, Appellees, United Steelworkers of America, AFL-CIO (hereinafter "International") and its Locals Nos. 1874 and 3732 (the membership of both locals is limited to Buffalo Forge's Production and Maintenance employees and the locals are hereinafter referred to collectively as "P&M Locals"[3/]; and the non-party unions, Locals Nos. 8267 and 8269 United Steelworkers of America, AFL-CIO (the membership of both locals is limited to Buffalo Forge's Office and Technical employees and the locals are hereinafter referred to collectively as "O&T Locals").

3/ The individuals which Buffalo Forge has named as defendants in its Complaint are not discussed herein. Insofar as they are sued in their capacity as Officers of the International or its Locals, any such consideration would be superfluous. Insofar as they are sued solely as individuals or representatives of a defendant's class of individuals. Section 301 does not provide a jurisdictional basis for such action. Bethlehem Mines Corp. v. Mine Workers, 344 F. Supp. 1161 (W.D. Pa. 1972); cf. Sinclair Oil Corp. v. Chemical Workers, 452 F.2d 49 (7th Cir. 1971).

It is undisputed that there is a complete absence here of any controversy between Buffalo Forge and the defendant unions with respect to the wages, hours or terms and conditions of employment of the P&M employees; that the labor dispute between Buffalo Forge and the O&T Locals, which arises out of negotiations for an initial collective bargaining agreement, preceded and precipitated the instant dispute concerning the defendant unions honoring of the valid O&T picket lines; and, that the P&M work stoppage which Buffalo Forge sought to have enjoined is not a strike over an arbitrable grievance.

The International has for over thirty years been the signatory, on behalf of the respective P&M Locals, to collective bargaining agreements with Buffalo Forge. The current contracts terminate on September 28, 1975. Section V of those contracts is a typical clause providing that all matters concerning wages, hours and conditions of employment in the respective plants are to be settled by arbitration. Section V reads, in relevant part, as follows:

> "Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this Agreement, or should any trouble of any
> /////

kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner: . . ." (Emphasis added)(Att. B at 17). 4/

It is uncontroverted that during this long bargaining history the parties have never had occasion to discuss the statutory right of the P&M Locals to honor a picket line established by another union or a sister local.

The O&T Locals were not parties to the proceedings in the court below, but their rights are very much at stake in this litigation. In early 1974, the National Labor Relations Board certified the International as the collective bargaining representative of Buffalo Forge's Office and Technical employees in two separate units, and collective bargaining negotiations were conducted over the terms for initial contracts. No agreement was reached, and on November 16, 1974, the members of the O&T Locals commenced

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4/ While there is a separate contract for Local 3732 and for Local 1874, these contracts are identical in all respects relevant to this case. Therefore, the copy of the Local 3732 contract which was attached as Exhibit B to Buffalo Forge's Complaint has been omitted in Attachment B.

an admittedly valid strike in support of their collective bargaining demands (A. 2a, 6a). In order to maximize the economic pressure which this collective bargaining strike exerted upon Buffalo Forge, admittedly valid picket lines were established by the O&T Locals at all the Buffalo area facilities of Buffalo Forge (A. 2a).

At a meeting of the officers of the P&M Locals held at 11:30 a.m. on Wednesday, November 20, 1974, the International authorized and directed that the O&T picket lines be honored (A. 13a). The afternoon of that same day Buffalo Forge learned of the possibility of a general work stoppage and sent telegrams to the International and the P&M Locals stating that in its opinion such action would be a violation of the P&M contracts (Appellant's Brief at 5). Those telegrams also expressed Buffalo Forge's willingness "to proceed to arbitration <u>under the collective bargaining agreement</u> in connection with any dispute which has <u>caused</u>" the work stoppage (Att. B at 31-34). While Buffalo Forge limited its offer to arbitration under the contract which contains inherent procedural delays, the International and the P&M Locals have taken the position throughout the proceedings below that they were willing to take the question of the contractual validity of their honoring of the O&T

picket lines to arbitration on one day's notice.[5/]

The next day, November 21, 1974, essentially all of Buffalo Forge's P&M employees refused to cross the O&T picket lines (A. 7a).[6/] The P&M work stoppage continued until the O&T picket lines were voluntarily withdrawn on December 15, 1974. The O&T picket lines have not been reestablished as of this date.

5/ The Brief filed in the court below on behalf of the defendant unions represented:

> "Defendants will submit the matter (the propriety of the P&M's refusal to cross the picket line) to an arbitrator appointed by the Court on one day's notice. In so saying, we reserve, of course, the right to argue that this dispute is not arbitrable because there was no meeting of the minds on this issue and because the collective bargaining agreement does not contemplate this type of dispute."
>
> ....
>
> "Let the Employer submit names to this Court from a list of arbitrators supplied by the Federal Mediation and Conciliation Service and the Union will promptly agree and go speedily to arbitration and will, of course, abide by that award. But the Employer here does not want arbitration, it wants an injunction and then an award five months later after it has broken the strike. The Employer-Plaintiff here has not even invoked its right to notify the Federal Mediation and Conciliation Services." (Defendants' Memorandum at 9, 13-14).

6/ Even after the International issued its so-called directions, certain members of the P&M Locals crossed the picket lines and returned to work (A. 13a). Moreover, Buffalo Forge claimed in the court below that some 40% of its O&T employees were likewise ignoring O&T picket lines.

Proceedings in the District Court

On November 26, 1974, Buffalo Forge made an application for a temporary restraining order prohibiting its P&M employees from continuing to honor the O&T picket lines (A. 4a). However, the papers were incomplete, and counsel for Buffalo Forge was required to return to court on the next day. The same problem arose and the District Court directed Buffalo Forge's counsel to file additional affidavits and adjourned argument until December 2, 1974 (A. 4a). On that date, the District Court denied the Buffalo Forge's application for a temporary restraining order, and its application for a preliminary injunction was set for an evidentiary hearing on the next afternoon (A. 5a). As a result of that evidentiary hearing and the affidavits which were filed, the District Court issued a Decision and Order dated December 13, 1974 denying Buffalo Forge's application for a preliminary injunction.

District Court's Opinion

The District Court's Decision and Order refusing to issue injunctive relief deals extensively with the main point raised by Buffalo Forge in the court below -- Buffalo Forge's contention that the P&M strike was actually generated by the refusal of certain truck drivers, also members of the International, to obey the orders of Buffalo Forge's supervisors that their trucks be driven through the picket lines (A. 8a) (Att. B at 5-6). The District Court's findings of fact

disposing of this contention as without factual merit are not challenged by Buffalo Forge on this appeal (Appellant's Brief at 10).[7/]

Judge Curtin also rejected Buffalo Forge's alternate argument that the existence of the P&M work stoppage itself vis-a-vis the no-strike clause in the P&M contracts was sufficient to raise an arbitrable issue which warranted the issuance of a Boys Markets injunction (A. 13a-16a). Dispositive for Judge Curtin were his factual findings that the only

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7/ Even on this appeal, Buffalo Forge persists in its efforts to pound this dispute into the shape of the usual Boys Markets case where the strike sought to be enjoined is one over an arbitrable grievance. For the first time on appeal, Buffalo Forge raises a new contention that the International's directions violated both the "Management" clause and Paragraph 22(a) of the "Hours of Work" section (Appellant's Brief at 10, 23). However Paragraph 22(a)'s definition of an employee as "deemed to be instructed to report for work on the next succeeding scheduled day" can only be read in conjunction with the liability for reporting pay which Paragraph 22(b) imposes on Buffalo Forge for an employee who is "instructed" to report for work but for whom there is no work (Att. B at 17). No claim was ever made that Buffalo Forge owed its striking P&M employees such "reporting pay." Moreover a similar attempt to "bootstrap" the work stoppage into the necessary arbitrable grievance was recently rejected in Plain Dealer Publishing Co. v. Local 53, ___ F. Supp. ___, 88 LRRM 2155, 2162 (N.D. Ohio 1974). This Court should recognize that Buffalo Forge is merely "grasping at straws," and under hornbook law these new arguments raised by the losing party for the first time on appeal should not be considered. Bogacki v. American Machine & Foundry Company, 417 F.2d 400, 407 (3d Cir. 1969).

dispute here was between Buffalo Forge and the striking members of the O&T Locals and that the O&T strike "preceded and precipitated" the P&M work stoppage (A. 15a). Thus the prerequisite Boys Markets finding that the P&M "strike is over an arbitrable grievance" was completely absent here (A. 14a-15a). Moreover, Judge Curtin found persuasive the Fifth Circuit's reasoning in Amstar Corp. v. Meat Cutters, 468 F.2d 1372 (1972) that to issue Boys Markets injunctions in labor disputes where the validity of the strike itself is the only possible arbitrable issue would go far beyond the "narrow" holding of the Supreme Court in Boys Markets (A. 15a-16a).[8/] Finally the cases cited by Buffalo Forge were found to be factually distinguishable because the P&M contracts here contained "no contractual provision . . . restricting the union's right to honor picket lines of other labor organization." (A. 16a).

While the request for injunctive relief was denied, no disposition was made or has been made of Buffalo Forge's damage claim.

8/ The District Court declined to follow the Fourth Circuit's decision in Monongahela Power Co. v. Local 2332, Int. Bro. of Electrical Workers, 484 F.2d 1209 (4th Cir. 1973).

ARGUMENT

The facts of this case reveal that there is a complete absence of any grievance between Buffalo Forge and the P&M Locals concerning wages, hours, or terms and conditions of employment of the P&M employees. It follows that Buffalo Forge must have sought this anti-strike injunction, not because the P&M work stoppage was pressuring it to resolve an arbitrable dispute, but because that work stoppage was pressuring it to resolve a non-arbitrable dispute -- the O&T strike over the terms of the initial O&T collective bargaining agreements. This it may not do for as we show herein (1) the narrow Boys Markets holding applies solely to strikes over arbitrable grievances and was not intended to encompass the situation present here where granting the injunction prayed for would constitute exactly the type of equitable interference with the O&T strike which the Norris-LaGuardia Act was enacted to prohibit; and (2) Buffalo Forge's failure to affirmatively pursue the defendant unions' offer of arbitration on one day's notice bars injunctive relief in this case.

I. THE DISTRICT COURT DID NOT ERR AS A MATTER OF LAW IN REFUSING TO ISSUE A BOYS MARKETS INJUNCTION BECAUSE THE P&M STRIKE IS NOT A STRIKE OVER AN ARBITRABLE GRIEVANCE.

There is no dispute between the parties about the fact that this case constitutes a "case involving or growing out of

a labor dispute" as defined in the Norris-LaGuardia Act[9/] and that, but for the possible applicability of the Boys Markets exception, the clear and unequivocal provisions of that Act would jurisdictionally bar the District Court from issuing the injunctive relief sought here. There is disagreement as to whether the facts here are such as to bring this case within the ambit of the Boys Markets exception. Before detailing the factual inapplicability of the Boys Markets exception, it is important to emphasize initially what the Supreme Court meant when it stated in Boys Markets:

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act." 398 U. S. at 253.

It is certainly true that Boys Markets overruled the holding in Sinclair Refining Company v. Atkinson, 370 U. S. 195 (1962) that, as a matter of statutory interpretation, Section 301 did not repeal Section 4 of the Norris-LaGuardia Act which therefore absolutely prohibited the issuance of anti-strike injunctions in Section 301 actions. Compare, 370 U. S. at 203, with, 398 U. S. at 238. But the Supreme Court did not repeat its previous error this time and hold that Section 301 had repealed Section 4 of the Act. Instead, the emphasis in Boys Markets was upon accommodation of the two

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9/ 29 U.S.C. § 113(a).

statutes, 398 U. S. at 250, and after carefully balancing the competing congressional policies underlying the two statutes, the Supreme Court stated:

> "We conclude, therefore, that the unavailability of equitable relief in the arbitration context presents a serious impediment to the congressional policy favoring the voluntary establishment of a mechanism for the peaceful resolution of labor disputes, that the core purpose of the Norris-LaGuardia Act is not sacrificed by the limited use of equitable remedies to further this important policy, and consequently that the Norris-LaGuardia Act does not bar the granting of injunctive relief in the circumstances of the instant case." 398 U. S. at 253.

Thus, the holding in Boys Markets was a "narrow one" because it applied only to the circumstances of that case where the issuance of an anti-strike injunction clearly promoted the policy announced in the Steelworkers Trilogy[10/] favoring the resolution of all labor disputes through arbitration and where, just as clearly, issuance of an anti-strike injunction did not contravene the "core purpose" of the Norris-LaGuardia Act.

Before comparing the circumstances of this case with that in Boys Markets, it is important to note that this Court

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10/ Steelworkers v. Enterprise Wheel & Car Corp., 363 U. S. 593 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U. S. 574 (1960); Steelworkers v. American Manufacturing Co., 363 U. S. 564 (1960).

has already had occasion to consider the scope of the accommodation which is necessary between Boys Markets and the Norris-LaGuardia Act in Emery Air Freight Corporation v. Local 295, 449 F.2d 586 (1971), and in New York Telephone Co. v. Communications Workers, 445 F.2d 39 (1971. In Emery, this Court stated:

> " '[I]t is helpful to pause to examine the current vitality of some of the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq. . . ." Only a few months ago, in New York Telephone Co., supra, we had occasion to scrutinize the Act. We pointed out, 445 F.2d at 49, that the 'generality' of injunctions issued in labor disputes had been 'one of the chief abuses that led to the Norris-LaGuardia Act.' We emphasized that the Act still applied to all labor disputes in which a federal court can issue an injunction, that nothing in Boys Markets, Inc. v. Retail Clerk's Union, Local 770, 398 U.S. 235, 90 S. Ct. 1583, 26 L.Ed.2d 199 (1970), is to the contrary, and that although that decision allows an employer injunctive relief in a labor dispute, such relief is 'limited to vindicating the arbitration process. . . .' " 499 F.2d at 588 (Emphasis in original).

This Court noted particularly the continuing applicability to Boys Markets injunctions of the preconditions set forth in Section 7, 8 and 9 of the Act, 29 U.S.C. § 107, 108, 109. 449 F.2d at 588. Finally, the narrowness of the Boys Markets exception was emphasized by pointing out that the Supreme Court "held that a strike may be enjoined only in carefully defined circumstances." 449 F.2d at 588. Thus, this Court

has strictly limited the Boys Markets exception to the circumstances which gave rise to its birth -- "vindicating the arbitration process," 445 F.2d at 50 -- and this Court has consistently refused to expand the exception to cover circumstances where the issuance of injunctive relief would encroach upon the policy judgments made by Congress in enacting the Norris-LaGuardia Act. See, Standard Food Products Corp. v. Brandenburg, 436 F.2d 964 (2d Cir. 1970); Morning Telegraph v. Powers, 450 F.2d 97 (2d Cir. 1971)(rehearing denied), cert. denied, 405 U. S. 954 (1972).

The legislative history of the Norris-LaGuardia Act more than confirms the propriety of the deference to the congressional judgments embodied in that Act which this Court has thus far so wisely shown. Indeed such judicial deference is absolutely mandatory if the courts are to avoid repeating the very judicial error which made the enactment of the Norris-LaGuardia Act necessary -- the judicial emasculation of Section 20 of the Clayton Act, 29 U.S.C. § 52, in Duplex Printing Press Co. v. Deering, 254 U. S. 443 (1921).[11/]

The necessity for drastically limiting federal equitable intervention into labor disputes had been well documented

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11/ Rep. LaGuardia, Define and Limit the Jurisdiction of Courts Sitting In Equity, H.R. Rep. No. 669, 72nd Cong., 1st Sess. 3 (1932)(hereinafter "House Report").

for Congress by Processors Frankfurter and Greene in their seminal work, The Labor Injunction.[12/] The Report of the Senate Committee on the Judiciary makes it clear that the purpose of the act was to free labor's lawful right to strike from the fetters of the "labor injunction." Sen. Norris, "To Define and Limit Jurisdiction of Court Sitting In Equity," Sen. Rep. No. 163, 72nd Cong., 1st Sess. 10 (1932)(hereinafter "Senate Report"). The difficulty with permitting anti-strike injunctions in labor disputes was the reality that "[t]he injunctive process is an extremely harsh remedy." Senate Report at 8. Anti-strike injunctions were recognized to be grossly unfair because they are inherently unable to deal with the substantive problems which give rise to a strike and because anti-strike injunctions, which necessarily interfere with the timing so crucial to a strike's success, always work to the employer advantage. The Labor Injunction at 79-81, 201. The employees' right to appeal from the wrongful issuance of an injunction was recognized to be a totally inadequate remedy because the damage was done long before an appeal

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12/ F. Frankfurter & N. Greene, The Labor Injunction (1930) (Republished by P. Smith, 1963)(hereinafter "The Labor Injunction").

could render any relief.[13/] On the other hand, an illegal strike can obviously cause irreparable damage to an employer's property. Congress was faced with making a difficult decision for as Professors Frankfurter and Greene emphasized:

> "The laws' conundrum is which side should bear the risk of unavoidable irreparable damage." The Labor Injunction at 201 (Emphasis in the original).

The solution which Congress adopted essentially placed that unavoidable burden on employers for the Norris-LaGuardia Act absolutely bans almost all equitable intervention by the inferior federal judiciary in labor disputes and strictly limits the exercise of equitable jurisdiction in the narrow area left open. While the language used in the Act is exceptionally broad, it was intended to be so for as the

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13/ "The harm of an injunction ninety-nine times out of one hundred is done and the injustice is completed within a few days after the restraining order is issued . . . .

. . . .

The only way to correct such an order is to take an appeal. But by the time such an appeal goes to the Supreme Court of the United States in most cases the backbones of the laboring men have been broken . . . The damage has been done and the evil has occurred." 75 Cong. Rec. 4929 (1932)(Remarks of Sen. Norris); accord, 75 Cong. Rec. 4935 (1932)(Remarks of Sen. Bratton); 75 Cong. Rec. 5489 (1932)(Remarks of Rep. Celler).

Supreme Court in Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365 (1960) recognized:

> "Congress was intent upon taking the federal courts out of the labor injunction business. . . ." 362 U. S. at 369.

The wholesale return of the federal judiciary to the odious "labor injunction business" was not the Supreme Court's purpose in creating the Boys Markets exception. Indeed after delicately balancing the competing congressional policies embodied in Section 4 of the Norris-LaGuardia Act and Section 301, the Supreme Court carefully delineated the circumstances in which an injunction may be issued by quoting the dissent in Sinclair as follows:

> " 'When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity . . . . ' 370 U. S. at 228. (Emphasis in original.)" 398 U. S. at 254.

Likewise the Supreme Court carefully qualified its conclusion "that the Norris-LaGuardia Act does not bar the granting of injunctive relief" by adding the caveat, "in the circumstances

of the instant case," 398 U. S. at 253, which the Opinion reiterates is a "case of a strike over an arbitrable grievance." 398 U. S. at 254, 236-237, 249.[14/]

The importance of this requirement to the balance struck in Boys Markets between the competing policies of Section 4 of the Act and Section 301 cannot be overemphasized. Only when a strike is over an arbitrable grievance does it also inherently subvert the arbitration process because the employer knows that, if he forgoes arbitration and immediately settles the underlying grievance, the economic detriment he suffers from the strike will end that much sooner.[15/] The facts in Sinclair and in Boys Markets reveal that the strikes there not only inherently subverted the arbitration process, but were patent attempts to avoid arbitration.

14/ This requirement that the strike sought to be enjoined must be a strike over an arbitrable grievance was likewise reiterated throughout the dissenting opinion in Sinclair. 370 U. S. at 228, 218, 224-225, 227.

15/ Where the only arbitrable issue is the validity of the strike itself, the economic detriment which the strike's continuation causes to the employer does not adversely affect the arbitration process because there is no arbitrable issue upon which the employer can "cave" thereby sacrificing arbitration for an immediate end to the strike. Note, 88 Harv. L. Rev. 463, 467-468 (1974). In that situation, arbitration may be had even if the strike is settled. Northwest Airlines, Inc. v. Air Line Pilots, 442 F.2d 251 (8th Cir. 1971).

In Sinclair, the union had carried out nine separate strikes each of which, the company claimed, was over a grievance concerning wages, hours or working conditions of its employees which should have been submitted to arbitration. 370 U. S. at 197. For instance, the complaint in Sinclair alleged that 999 employees struck because three riggers were docked a total of $2.19 in their pay for having reported late to work. 370 U. S. at 199 n.10. This dispute over wages due an employee was obviously a "difference regarding wages" subject to resolution through mandatory arbitration under the Sinclair contract, and the strike obviously violated the union's contractual commitment that "[t]here shall be no strikes . . . for any cause which is or may be the subject of a grievance." Likewise in Boys Markets, the strike was over a work assignment dispute which arose because a supervisor and some non-bargaining unit employees rearranged merchandise in some frozen foods display cases. The union claimed this was bargaining unit work and requested that union personnel strip and restock the food cases. 498 U. S. at 239. The company refused, and the union struck over this integrity of the bargaining unit dispute despite its previous contractual commitment to resolve through arbitration "[a]ny and all matters of controversy . . . arising out of or in any way involving the interpretation or application of this Agreement . . . . " 398 U. S. at 238 n.3. The balance was so heavily weighted in favor of an injunction in

Boys Markets that the Supreme Court stated:

> "[T]he central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations is hardly retarded-- if anything, this goal is advanced -- by a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration." 398 U. S. at 252-253 (footnote omitted).

The situation here is the converse of that in Boys Markets and Sinclair for the facts of this case heavily weight the Boys Markets balance against issuing injunctive relief. First, the P&M work stoppage presented absolutely no threat to the policy favoring arbitration because the defendant unions have repeatedly made it clear to Buffalo Forge that they were willing on one day's notice to arbitrate the contractual validity of the P&M work stoppage before a court appointed arbitrator.[16/] It is Buffalo Forge's own recalcitrance which has thwarted arbitration here, and its failure to act affirmatively upon this offer is itself sufficient to preclude the issuance of a Boys Markets injunction under Section 8 of the Norris-LaGuardia Act, 29 U.S.C. § 108.[17/]

16/ See, Statement of Facts, supra at 8 n.5.

17/ See, Argument infra at 35-37.

Again the situation here is quite different from that in Boys Markets because Judge Curtin concluded that there was "no arbitrable grievance between the parties." (A. 15a). Judge Curtin also made a finding of fact that the O&T strike "preceded and precipitated the work stoppage of the defendant Locals." (A. 15a).[18/] This finding is entitled to great weight on appeal and cannot be overturned unless clearly erroneous. Lassiter v. Fleming, 473 F.2d 1374, 1375 (2d Cir. 1973). This means that the P&M work stoppage could not possibly be a strike over an arbitrable grievance because the dispute which gave rise to the work stoppage, the O&T strike in support of their initial contract demands, is not subject to resolution under the arbitration clause in the P&M Contracts: The issues in the O&T dispute do not concern wages, hours or conditions of employment of the P&M employees; nor do they concern the "meaning and application" of the provisions of the P&M contracts; and, the O&T dispute certainly does not constitute "trouble of any kind aris[ing] in the plant . . . . " (Att. B at 17). Thus under this Court's holding in Emery it is

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18/ The importance of this finding as to the cause of the strike should not be overlooked. If the honoring of the O&T picket line had been just a pretext and the real purpose had been to pressure Buffalo Forge into making concessions on pre-existing arbitrable P&M grievances, Judge Curtin's findings would have been to that effect, and the issuance of a Boys Markets injunction would have been proper. See, Food Fair Stores, Inc. v. Food Drivers Local 500, 363 F. Supp. 1254, 1256 (E.D. Pa. 1973).

abundantly clear that it would have been "improper" for the District Court to have enjoined the P&M strike "because the ' "strike * * * sought to be enjoined * * * [was not] over a grievance which both parties are contractually bound to arbitrate." ' 398 U. S. at 254 . . . . " Emery Air Freight Corporation v. Local 295, 449 F.2d 586, 591 (1971)(Citations omitted); accord, Avco Corporation v. Auto Workers, Local 787, 459 F.2d 968, 972 (3d Cir. 1972); New York News, Inc. v. New York Typographical Un. No. 6, 374 F. Supp. 121, 126 (S.D.N.Y. 1974).

Recognizing this weakness in its own case, Buffalo Forge has vainly sought to find, or create, an arbitrable grievance which it could claim had caused the P&M strike. It initially relied on the truck driver's incident which the District Court rejected after an evidentiary hearing as without merit.[19/] Then after the District Court's decision had been entered and appealed from, Buffalo Forge attempted to conjure up a dispute involving the "Management" clause and "Hours of Work" clause, but again without success.[20/] Having utterly failed to find an arbitrable grievance, Buffalo Forge now argues that it is nonetheless entitled to an injunction because the very question of the validity of the P&M strike vis-a-vis the no-strike clause in the P&M contracts is itself arbitrable.

19/ See, Statement of Facts, supra at 9-10.

20/ See, Statement of Facts, supra at 10 n.7.

There is a split among the circuits over that issue. Compare, Monongahela Power Co. v. Local 2332, Int. Bro. of Electrical Workers, 484 F.2d 1209 (4th Cir. 1973)(injunction issued), with, Amstar Corp. v. Meat Cutters, 468 F.2d 1373 (5th Cir. 1972)(injunction denied).[21/] Judge Curtin declined to follow Monongahela Power because he found the reasoning of the following excerpt from Amstar persuasive:

> " '. . . The strike by the Chalmette employees was not 'over a grievance' which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute -- the validity under the Union's no-strike obligation of the member-employees honoring the ILA picket line. Were we to hold that
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21/ The cases decided by the other Courts of Appeals and cited in Appellant's Brief are clearly distinguishable. In Napa-Pittsburgh v. Automotive Chauffeurs, Local 926, 502 F.2d 321 (3d Cir. 1974), cert. denied, 95 S. Ct. 625 (1974), the contract contained a clause permitting the union to honor primary picket lines but not secondary ones, and the Third Circuit held that because of the presence of that clause the question of whether or not the picket line was primary or secondary was for the arbitrator to decide. 502 F.2d at 323. Injunctions were also issued in Island Creek Coal Co. v. Mine Workers, ___ F.2d ___, 88 LRRM 2364, 2366-2367 (3d Cir. 1975) and Inland Steel Co. v. Mine Workers, Local 1545, 505 F.2d 293 (7th Cir. 1974), but the contracts there contained an exceptionally broad arbitration clause and lacked an express no-strike clause. The absence of an express no-strike clause presents considerations entirely different from those presented here, and the Seventh Circuit so indicated in the Inland Steel case. 505 F.2d at 299. In fact in a different context, the Seventh Circuit recently upheld the legality of a P&M local's honoring of a clerical local's picket line where the P&M contract contained an express no-strike clause. Gary Hobart Water Corp. v. NLRB, ___ F.2d ___, 76 CCH Lab. Cases ¶ 10,668 (7th Cir., decided Feb. 21, 1975).

> the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a Boys Markets injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The Boys Markets holding was a 'narrow one,' not intended to undermine the vitality of the anti-injunction provision of the Norris-LaGuardia Act. Indeed, the Supreme Court specifically stated that its decision did not mean 'that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance.' 468 F.2d at 1373.' " (A. 15a-16a).

Comparing this excerpt from Amstar with this Court's prior decisions, it is readly apparent that they are all based upon the same premise that "[t]he Boys Markets decision . . . was a 'narrow one' . . . . " New York Telephone Co. v. Communications Workers, 445 F.2d 39, 50 (1971); accord, Emery Air Freight Corporation v. Local 295, 449 F.2d 586, 588 (1971). Moreover, operating from that premise but in a different factual context, this Court reached the same conclusion in Emery as that reached by the Fifth Circuit in Amstar that an injunction is improper where the strike sought to be enjoined is not a strike over an arbitrable grievance. 449 F.2d at 588. Thus, Amstar's reading of Boys Markets is the same as this Court's, and Judge Curtin was quite correct in citing Amstar in support of his conclusion that no injunction may be issued in this case. See, New York

News, Inc. v. New York Typographical Un. No. 6, 374 F. Supp. 121, 126 (S.D.N.Y. 1974).[22/]

The force of this conclusion, that injunctive relief is inappropriate here where the strike is not over an arbitrable grievance, is not undercut by Buffalo Forge's attempt to distinguish Amstar on its facts (Appellant's Brief at 25-26). It is true that the issue of the International's "authorization and instructions" was not present in Amstar, but even when an authorization issue was presented in a sympathy strike case recently, Amstar was found to be controlling and injunctive relief was denied. Carnation Co. v. Teamsters, Local 949, Civil No. 74-H-775, 86 LRRM 3012, 3013 (S.D. Tex., Decided June 28, 1974); see also, General Cable Corp. v. Int. Bro. of Electrical Workers, 331 F. Supp. 478, 481 (D. Md. 1971). More importantly, such

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22/ The conclusion reached in Barnard College, City of New York v. Transport Workers, 372 F. Supp. 211 (S.D.N.Y. 1974), is contrary to that reached by Judge Curtin here and that indicated in New York News. However, it is important to note this Court's prior decisions interpreting Boys Markets are not distinguished or even discussed in Barnard. Although claiming to have applied the Boys Markets criteria, 372 F. Supp. at 213, the Opinion in Barnard makes no mention of the requirement reiterated throughout Boys Markets that the strike must be one over an arbitrable grievance. 398 U. S. at 236-237, 249, 254. This Court has gone to great lengths to determine if a strike which was arguably a violation of a no-strike commitment was also a strike over an arbitrable grievance and has reversed the issuance of a Boys Markets injunction where the underlying dispute was found not to be arbitrable. Morning Telegraph v. Powers, 450 F.2d 97, 102-103 (1971)(rehearing denied) cert. denied 405 U. S. 954 (1972).

factual distinctions are irrelevant because the controlling consideration, as this Court recognized in New York Telephone, is whether injunctive relief is necessary under the facts of a given case to vindicate the policy favoring arbitration. 445 F.2d at 50. The authorization issue adds nothing to the arbitration policy consideration for, as the district court in Carnation pointed out, the strike is over the non-arbitrable issues involved in the sister union's dispute, not over the union's actions in authorizing or even coercing the honoring of the sister union's picket line:

> "The clear import of Boys Markets is not to create prerequisites that must be complied with before employees may strike. Rather, its goal is the protection of 'the effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes without resort to strikes, lockouts, and similar devices'. Boys Markets v. Retail Clerks Union, supra at 252. While arbitration in this instance could conceivably have prevented the strike by holding the activities of the union agents illegal, arbitration would not have dispensed with the employee's reason for striking. The purpose of the strike in the present case was not to settle an arbitrable grievance; rather the strike itself created that grievance." Carnation Co. v. Teamsters, Local 949, Civil No. 74-H-775, 86 LRRM 3012, 3014 (S.D. Tex., Filed June 28, 1974); Plain Dealer Publishing Co. v. Cleveland Typographical Local 53, ___ F. Supp. ___, 88 LRRM 2155, 2160 (N.D. Ohio 1974); Ourisman Chevrolet Co. v. Automotive Lodge No. 1486, 77 LRRM 2084 (D.D.C. 1971); Simplex Wire & C. Co. v. Int. Bro. of Electrical Workers, Local 2208, 314 F. Supp. 885 (D.N.H. 1970).

Finally it cannot be repeated too many times that under the facts of this case the P&M strike presented absolutely no threat to the arbitration process. It is uncontroverted that there is no dispute between Buffalo Forge and the defendant P&M unions as to any wages, hours, or terms and conditions of employment of the P&M employees. Moreover, no injunction is necessary here to vindicate the arbitration process because the defendant unions have always stood ready to arbitrate on one day's notice.

Thus as we have just shown the action of the P&M Locals in honoring the O&T picket lines had no adverse affect upon the federal policy favoring labor arbitration even when the instant labor dispute is considered only in the context of the P&M contracts. Moreover, we have also shown that the P&M strike is not a strike over an arbitrable grievance -- a showing which so decisively weights the Boys Markets balance against the issuance of injunctive relief that this Court must, without more, affirm the Decision and Order of the District Court as correctly decided in accordance with Emery Air Freight Corporation v. Local 295, 449 F.2d 586, 591 (2d Cir. 1971). Below, we briefly consider the other side of the Boys Markets balance, protection of the "core purpose" of the Norris-LaGuardia Act, to emphasize that granting Buffalo Forge the

injunctive relief which it requested[23/] would clearly violate the "core purpose" of that Act as it relates to the O&T strike.

The propriety of issuing an injunction against the P&M Locals must be viewed in the context of the overall O&T dispute because the acts which Buffalo Forge seeks to have enjoined -- the P&M Locals honoring of the O&T picket lines -- is an integral part of the O&T strike effort. Section 4 of the Norris-LaGuardia Act prohibits federal courts from issuing "strike-breaking"[24/] injunctions "in any case involving or

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23/ Again shifting its position in an apparent attempt to better its chances on this appeal, Buffalo Forge now characterizes the prayer for equitable relief in its Complaint as seeking "only a complete revocation of the instructions which caused the work stoppage." (Appellant's Brief at 18). This innocent characterization flies in the face of Buffalo Forge's broadly worded Complaint. First, Buffalo Forge sues certain individual defendants not only as officials but "as representatives of a class, namely the employees of Plaintiff." (App. B at 3). Then, Buffalo Forge's Complaint requests that an injunction be issued against these same class defendants "and all those in active concert or participation with them" restraining "each of them . . . from in any manner authorizing . . . assisting or participating in any strike, work stoppage or other interference or interruption with Plaintiff's operation. . . ." (App. B at 8). Regardless of what Buffalo Forge now wishes its Complaint had said, it is clear that the Complaint requested the District Court to act as a strike breaking agency with respect to each and every one of Buffalo Forge's P&M employees.

24/ The Supreme Court has held that "one major purpose" of Congress in passing the Norris-LaGuardia Act was "to prevent the use of injunction improperly as a strike-breaking implement", Bro. of Railroad Trainmen, Lodge 27 v. Toledo, P&W Ry., 321 U.S. 50, 65-66 (1944)(emphasis added)(footnote omitted); accord, Senate Report at 25; 75 Cong. Rec. 5478 (1932) (Initial Statement of Representative LaGuardia).

growing out of any labor dispute . . .", and Section 13 expansively defines the phrase "case involving or growing out of" to encompass workers who are not part of the immediate employer-employee dispute but "who are employees of the same employer. . . ." 29 U.S.C.§113(a). Thus, under the Norris-LaGuardia definitions, the P&M dispute is part of the overall O&T labor dispute.

It is important to note that Buffalo Forge's own Complaint recognizes that the O&T picketing results from a breakdown "in negotiation of the first collective bargaining agreement" for its O&T employees (App. B at 4) (emphasis added). The very fact that the O&T Locals are striking in order to establish an initial collective bargaining relationship with Buffalo Forge means that they are nascent labor organizations which come within "the central purpose of the Norris-LaGuardia Act" which is "to foster the growth and viability of labor organizations." Boys Markets, Inc. v. Retail Clerks, Local 770, 398 U.S. 235, 252 (1970). The legislative history of the Act is replete with references to the necessity of enacting the Norris-LaGuardia Act to promote collective bargaining,[25/] and the words of the Norris-LaGuardia Act itself bespeak an intent to prevent employers from utilizing federal court injunctions as weapons against strikes in support of collective bargaining. Section 1 of the Act prohibits federal courts from

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25/ 75 Cong. Rec. 4509-4510 (1932) (Initial Statement of Senator Norris); 75 Cong. Rec. 5466 (1932) (Remarks of Rep. Greenwood); 75 Cong. Rec. 5492 (1932) (Remarks of Rep. Garber); 75 Cong. Rec. 5481 (1932) (Remarks of Rep. Oliver); 75 Cong. Rec. 5490 (1932) (Remarks of Rep. Cellar); 75 Cong. Rec. 5491 (1932) (Remarks of Rep. Hill).

issuing any injunction "contrary to the public policy declared in this Act," 29 U.S.C. §101, and Section 2 declares it to be the public policy that unorganized workers "shall be free from the interference, restraint or coercion of employers of labor . . . in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . ." 29 U.S.C. §102.

Thus it is clear that eliminating equitable interference with strikes which seek to bring about initial collective bargaining agreements between employers, such as Buffalo Forge, and new labor organizations, such as the O&T Locals, is exactly what the Norris-LaGuardia Act was all about. Of course, Buffalo Forge readily admits that the O&T picket lines "are bona fide, primary and legal" (A. 2a), and Buffalo Forge proclaims proudly, even if somewhat disingenuously, that it has "not asked for a court order to ban any picketing by its office-technical employees." (Appellant's Brief at 18). The truth of the matter is that the broad injunction[26/] which it sought in the District Court against the P&M Locals would have just as effectively broken the O&T strike as would the "prohibited" direct injunction it now so artfully disclaims seeking. The Norris-LaGuardia Act was intended to cover both the direct and the indirect situations because, as Senator Norris so aptly stated, it is the effective exercise of the lawful right to strike which is protected:

26/ See, Argument, supra at 30 n.23.

> "If we concede, as we must, that labor has the right to combine . . . for the purpose of securing increased wages or bettering conditions of labor, then it follows . . . that the strike becomes a lawful instrument in the economic struggle between employer and employee. It would be hypocrisy, however, to concede these rights to labor and then to prohibit any effective exercise of these rights by labor." Senate Report at 10.

Therefore, the situation in this case is the reverse of that present in Boys Markets because issuance of the injunction sought here would impermissibly interfere with the lawful O&T strike thereby sacrificing "the core purpose of the Norris-LaGuardia Act."[27/] Boys Markets, Inc. v. Retail Clerks, Local 770, 398 U.S. 235, 253 (1970). This does not mean that Buffalo

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27/ The sister local picketing cases which have been decided have not explicitly held that the nature and purpose of the sister local's picketing is determinative. Indeed in those cases where injunctions have issued, it is not possible to determine from the published opinions the purpose for which the sister locals were picketing. Monongahela Power Co. v. Local 2332, Int. Bro. of Electrical Workers, 484 F.2d 1209 (4th Cir. 1973); Barnard College, City of N.Y. v. Transport Workers, 372 F. Supp. 211, 212 (S.D.N.Y. 1974). In sharp contrast, in the cases where injunctions were denied the fact that the sister local was engaged in a lawful strike in support of collective bargaining or recognition was expressly noted. See, e.g., Amstar Corp. v. Meat Cutters, 468 F.2d 1372, 1373 (5th Cir. 1972) (strike for contract renewal); Simplex Wire & Cable Co. v. Local 2203, Int. Bro. of Electrical Workers, 314 F. Supp. 885 (D.N.H. 1970) (strike for initial contract). The nature and purpose of the sister local's picketing should be a determinative factor as to whether it would be "equitable" to issue Boys Markets injunctions in such situations for Equity does not deal in "halves." Thus where, as here, the court asked to issue the Boys Markets injunction cannot eliminate, or even deal effectively with, the issues in the sister local's dispute, equitable considerations prohibit the issuance of any injunction. Lanco Coal Company v. Southern Labor Union, Local 520, 320 F. Supp. 273, 275 (N.D.Ala. 1970).

Forge has been left without any legal recourse. Buffalo Forge can still arbitrate the P&M dispute, and if it prevails, its right to injunctive relief upon the return of the O&T picket lines would be stronger. See, Philadelphia Marine Trade Assn. v. Local 1291, Longshoremen, 368 F.2d 932 (3rd Cir. 1966), rev'd on other grounds, 389 U.S. 64 (1967). Of course, Buffalo Forge can still pursue its pending damage claim. See, Eazor Express, Inc. v. Teamsters, Local 377, 376 F. Supp. 841 (E.D. Pa. 1974). Its legal remedies are adequate, and all that the Norris-LaGuardia Act does is to say that the right of the O&T Locals to conduct this lawful strike in support of garnering an initial contract with Buffalo Forge is deemed to be so much in the public's interest that Buffalo Forge cannot hinder the effective exercise of that right by means of that "extremely harsh remedy" known as the labor injunction. Senate Report at 8.

Thus whether the Boys Markets balance is examined with regard to the federal policy favoring labor arbitration or with regard to the federal anti-injunction policy of the Norris-LaGuardia Act, it is obvious that under the facts of this case that balance is overwhelmingly weighted against the issuance of a Boys Markets injunction. Therefore, this Court should affirm the District Court's "Decision and Order" denying Buffalo Forge such preliminary injunctive relief.

II. BUFFALO FORGE IS BARRED BY SECTION 8 OF THE NORRIS-LaGUARDIA ACT FROM OBTAINING A BOYS MARKETS INJUNCTION BECAUSE IT FAILED TO ACT AFFIRMATIVELY UPON THE OFFER FOR ARBITRATION ON ONE DAY'S NOTICE.

While this Court is strenuously urged to decide this case by affirming the District Court's holding that it was without jurisdiction to issue a Boys Markets injunction because the P&M strike was not a strike over an arbitrable grievance, counsel for the appellees would be remiss in his duty if this Court were not made aware that there is an alternate ground upon which the decision below may be affirmed without consideration of either Amstar or Monongahela Power. Simply put, Buffalo Forge is not entitled to a Boys Markets injunction because it has failed to comply with the requirements of Section 8 of the Norris-LaGuardia Act which reads:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation of voluntary arbitration." 29 U.S.C. §108.

On its face and as interpreted, Section 8 prohibited the issuance of any injunctive relief in this labor dispute unless and until the complainant, Buffalo Forge, had met not only all of its legal obligations, but also had made every reasonable effort to resolve the P&M work stoppage by engaging in voluntary arbitration

which is not legally required. Bro. of Railroad Trainmen, Lodge 27 v. Toledo P. and W. Ry., 321 U.S. 50, 57 (1944); Rutland Railway Corp. v. Bro. of Locomotive Engineers, 307 F.2d 21, 39 (2d Cir. 1962), cert. denied, 372 U.S. 954 (1963). This Court has already served notice in Emery that the requirements of Section 8 must be met in Boys Markets cases by stating:

> "Thus, before an employer in a dispute with a union can obtain an injunction, there are a number of conditions to be satisfied. . . . Section 8 of the Act, 29 U.S.C. §108, requires a showing by the complainant that he had made 'every reasonable effort to settle' the dispute."
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> 449 F.2d at 588.

Moreover, compliance with the requirements of Section 8 was intended to be a "condition precedent" to the issuance of each and every anti-strike injunction, 79 Cong. Rec. 5508 (1932) (Rep. LaGuardia), and the requirements are so important that the Supreme Court in the Toledo case refused to waive a company's failure to comply even where the strike had become violent. 321 U.S. at 65-66. Buffalo Forge's hands must be clean if it is to be awarded a Boys Markets injunction by district courts within this Court's jurisdiction. See, New York Telephone Co. v. Communications Workers, 445 F.2d 29, 50 (2d Cir. 1971).

The facts in this case readily reveal that Buffalo Forge has not made "every reasonable effort" to resolve the P&M dispute through voluntary arbitration. In its Complaint, Buffalo Forge merely stated its willingness "to proceed to arbitration under the collective bargaining agreement in connection with any dispute

which has caused this reported action [planned P&M work stoppage]" (Att. B. at 30-34, 7). Expressions of willingness to arbitrate are not enough for the complainant must take all affirmative action reasonably necessary to resolve the dispute through voluntary arbitration. See, Transamerican Trailer Transport, Inc. v. Seafarers Int. Union, 80 LRRM 2965, 2969 (D.P.R. 1971); Elevator Manufacturers Ass'n. of N.Y. v. Elevator Constructors, Local No. 1, 331 F. Supp. 165, 167 (S.D.N.Y. 1971). Moreover, Buffalo Forge utterly failed to respond affirmatively or negatively to the offer made on behalf of the International and the P&M Locals to resolve the question of the contractual validity of the P&M work stoppage by arbitration before a court appointed arbitrator on one day's notice.[28/] Even today, months after the O&T picket lines have been removed, Buffalo Forge still has done nothing other than state its willingness to arbitrate under the contract.

This is certainly not a situation where an injunction against the defendants is necessary to vindicate the arbitration process. New York Telephone Co. v. Communications Workers, 445 F.2d 39, 50 (2d Cir. 1971). It is Buffalo Forge's own recalcitrance which has thwarted the arbitration process. The prerequisites of Section 8 have not been met, and the District Court's decision denying injunctive relief must be affirmed under Emery Air Freight Corp. v. Local 295, 449 F.2d 586 (2d Cir. 1971).

28/ See, Statement of Facts, supra at 8 n.5.

CONCLUSION

For the reasons stated hereinabove, this Court should affirm the "Decision and Order" of the District Court refusing to issue a preliminary injunction in this labor dispute.

Respectfully submitted,

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Dated: March 20, 1975

JOHN T. CURTIN

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

Civ-74-546

TITLE OF CASE	ATTORNEYS
UFFALO FORGE COMPANY v. NITED STEELWORKERS OF AMERICA, AFL-CIO; . W. ABEL as International President; ITCHELL F. MAZUCA, individually and as District Director, and JOHN GRUKA, individually and as International Representative, of the UNITED STEELWORKERS OF AMERICA, AFL-CIO CAL UNION NO. 1874 of the United Steelworkers of America AFL-CIO; VALENTINE F. ZIZZI, individually and as President; nd VALENTINE OLEJNICZAK, individually and as Vice President, of Local Union No. 1874 of the United Steelworkers of merica, AFL-CIO OCAL UNION NO. 3732 of the United Steelorkers of America, AFL-CIO; KERMIT ASELEY, individually and as President; and ALFRED LIGAMMARI, individually and as Vice President, of Local Union No. 3732 f the United Steelworkers of America, FL-CIO	For plaintiff: Jeremy V. Cohen Flaherty, Cohen, Grande & Randazzo, P.C. 1016 Liberty Bank Bldg. Buffalo, N.Y. 14202 (716) 853-7262 For defendant: Thomas P. McMahon McMahon & Crotty 1028 Liberty Bank Bldg. Buffalo, N.Y. 14202

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. mailed	Clerk		11/26/74	#17366	15 00	
			11/29/74	Trans. USCA D26		15 00
			12/18/74	#17751	5 00	
S. mailed	Marshal		12/23/74	Trans. USCA D30		5 00
asis of Action:	Docket fee					
bor Management Relations Act	Witness fees					
ction arose at:	Depositions					

ATTACHMENT A

1

Civ-74-546 Buffalo Forge Company v. United Steelworkers of America, et al.

DATE	PROCEEDINGS	Date Order or Judgment Noted
9 4		
26	Filed Complaint and orig. Summons (manner of service to be decided)	
26	JS 5 made	
27	Application for TRO and prelim. injunction--pltf. to file affidavits by 11/29/74; deft. to file affidavits by 12/2/74 adj. 12-3-74	
29	Filed Pltf's. Affidavits in support of TRO request	
Dec. 2	" Affidavit of Deft. Valentine Zizzi	
2	" Affidavit of Deft. Olejniczak	
2	" Pltf's. Brief	
3	Hearing on application by pltf. for a preliminary injunction. Decision reserved.	
13	Filed decision & order denying pltfs. application for a preliminary injunction.-Curtin, DJ Notice &copies to Jeremy Cohen & Thomas McMahon	F-159
16	Filed Mar. ret. on S&C served on I. W. Abel on 12-11-74: Mitchell F. Mazuca on 12-11-74: John Gruka on 12-11-74: Valentine Zizzi on 12-9-74: Valentine Olejniczak on 12-10-74:Kermit Haseley on 12-9-74& Alfred Ligammari on 12-11-74	
18	Filed Defts. memorandum, statement of facts (Ct. received 12-6-74 & subsequently filed)	
18	" Pltf's. Notice of Appeal (copy mailed to Mr. McMahon and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Cohen)	
18	" Bond for costs on appeal	
9 5		
JAN 2	Original papers, docket entries and Clerk's certificate mailed to Clerk, CCA	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BUFFALO FORGE COMPANY Plaintiff v. UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W.ABEL as International President; MITCHELL F. MAZUCA, individually and as District Director, and JOHN GRUKA, individually and as International Representative, of the UNITED STEELWORKERS OF AMERICA, AFL-CIO LOCAL UNION NO. 1874 of the United Steelworkers of America AFL-CIO; VALENTINE F. ZIZZI, individually and as President; and VALENTINE OLEJNICZAK, individually and as Vice President, of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, individually and as President; and ALFRED LIGAMMARI, individually and as Vice President, of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO Defendants	CIVIL ACTION No. 74-546 COMPLAINT FOR INJUNCTIVE RELIEF--SPECIFIC PERFORMANCE AND FOR DAMAGES

COMES NOW THE PLAINTIFF, Buffalo Forge Company, and alleges as follows:

1. The jurisdiction of this Court arises under Section 301 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, Title III, Section 301; 61 Stats. 156, 29 U.S.C. 685, as amended)

2. Plaintiff is a corporation duly organized under and by virtue of the laws of the State of New York, and is licensed to do business and is doing business in the State of New York. At all times material herein, Plaintiff has maintained its principal office and place of business at 490 Broadway, Buffalo, New York, and has been engaged in the business of

ATTACHMENT B

manufacturing and distributing pumps and air handling equipment at plants and office facilities located at 490 Broadway, Buffalo, New York; Duke Road, Cheektowaga, New York; and Oliver Street, North Tonawanda, New York; where it employs approximately 1750 employees. Plaintiff is in an industry affecting commerce as defined in the Labor Management Relations Act 1947 (Act of June 23, 1947), C.120; 61 Stats.136; 29 U.S.C. Section 141.197, as amended, hereinafter referred to as the "Act".

3. Defendant, United Steelworkers of America, AFL-CIO, hereinafter called "International Union", is an unincorporated association,commonly known as a "labor union", and by and through its officers, agents and employees, is and at all times material herein has been the collective bargaining representative for production and maintenance employees employed by Plaintiff at its Buffalo, Cheektowaga and North Tonawanda, New York, plants. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C.Section 185.

4. Defendant, Local Union No. 1874 of the United Steelworkers of America, AFL-CIO, hereinafter called "Local 1874", is an unincorporated association, commonly known and referred to as a "labor union", chartered by, a part of and an affiliate of the Defendant, International Union, and has at all times material herein maintained an office at 490 Broadway, Buffalo, New York, and is engaged, through its officers and agents, in representing production and maintenance employees employed by Plaintiff at its Buffalo and Cheektowaga, New York plants. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. Section 185.

5. Defendant, Local Union No. 3732 of the United Steelworkers of America, AFL-CIO, hereinafter called "Local 3732", is an unincorporated association, commonly known and referred to as a "labor Union", chartered by, a part of and an affiliate of the Defendant, International Union, and has at all times material herein maintained an office at 874 Oliver Street, North Tonawanda, New York, and is engaged, through its officers and agents, in representing production and maintenance employees employed by Plainiiff at its North Tonawanda, New York plant. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. Section 185.

6. Defendant, I.W.Abel, is the International President for the International Union; Defendant, Mitchell F. Mazuca, is the District Director for the International Union; and Defendant, John Gruka, is an International Representative for the International Union. The other individual defendants are officers of Local Union No. 1874 and/or Local Union No. 3732, and also employees of the Plaintiff and are named as representatives of a class, namely the employees of Plaintiff.

7. Plaintiff has been party to collective bargaining agreements with Defendant International Union, Local 1874 and Local 3732 for more than twenty years, the most recent of which is effective, by its terms from October 1, 1972, to September 28, 1975, and covering approximately 930 employees in Local 1874 bargaining unit, and approximately 83 employees in Local 3732 bargaining unit. Copies of said agreements are marked Exhibit "A" and "B" respectively, and made a part hereof.

8. Defendant unions, acting by and through their officers and/or agents are the sole and exclusive bargaining agent for the production and maintenance employees in the bargaining units described in paragraphs 4 and 5 above. Said officers and/or agents have held themselves out as possessing and they do possess the requisite legal authority to have the unions become and remain party to a binding contract with Plaintiff for and on behalf of said employees who are employed by Plaintiff and covered by the Agreements referred to in paragraph 7 above.

9. International Union and its affiliated Local Unions Nos. 8267 and 8269 are the exclusive bargaining agent for office clerical and technical employees of Plaintiff employed at the same plants and office facilities referred to in paragraphs 2,3,4 and 5. Plaintiff and International Union and the aforenamed Local Unions have been engaged, for several months, in negotiation of the first collective bargaining agreement covering said office clerical and technical employees.

10. In the absence of a collective bargaining agreement covering office clerical and technical employees, commencing on or about November 16, 1974, International Union, Local Union Nos. 8267 and 8269, and some but not all office clerical and technical employees engaged in a strike, picketing and refusal to perform their work. Said strike, picketing and work stoppage is continuing.

11. On November 18, 1974, Defendant Local Union 3732 and its members,employed by Plaintiff, engaged in a one-day strike and work stoppage and refusal to cross picket lines established by International Union and Local No. 8267 at Plaintiff's plant and office facility at Oliver Street, North Tonawanda, New York.

12. Commencing on or about November 21, 1974, and continuing to date, agents and representatives of Defendant International Union, including Defendant John Gruka and the named defendant officers and agents of Local 1874 and Local 3732 instigated, directed, condoned, participated in, aided and authorized the production and maintenance employees of Plaintiff, members of the aforesaid labor unions, to engage in a strike and work stoppage and collective refusal to cross the picket lines established by International Union and Local Unions 8267 and 8269, at Plaintiff's aforementioned Buffalo, Cheektowaga, and North Tonawanda, New York, facilities, notwithstanding and in derogation of terms of the current collective bargaining agreements binding on International Union, Local 1874 and Local 3732, and their members employed by Plaintiff.

13. On or about November 18, 1974, Defendant labor unions, through their officers and agents, verbally notified Plaintiff of their objection to Plaintiff's instruction and direction to its truck drivers who are members of Local 1874 and Local 3732, to perform certain duties which required driving vehicles across the picket lines established at the Plaintiff's plants by International Union and Local 8267 and Local 8269.

14. On information and belief, the strike,work stoppage and refusal to cross picket lines described above in paragraph 12 was directed and instituted by the Defendant labor unions and is continuing over the complaint or grievance described above in paragraph 13.

15. The collective bargaining agreements between Plaintiff and Defendant International Union, Local 1874 and Local 3732 contain a mandatory grievance and arbitration procedure, which is set forth in Section V, and at page 12, provides for final and binding arbitration of any dispute or grievance that may arise.

16. The dispute described above in paragraph 13 is subject to the grievance and arbitration procedure referred to and set forth above.

17. The collective bargaining agreements between Plaintiff and Defendants International Union, Local 1874 and Local 3732 (Exhibits "A" and "B") at page 6, (paragraph 14 (b)) specifically prohibits both the Defendant unions and employees from authorizing or engaging in any strikes or work stoppages during the term of the agreements, as follows:

> b. There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved.

18. The above-mentioned strike and work stoppage, which began November 21, 1974 and continues to date, has seriously disrupted and interfered with the manufacturing operations of Plaintiff at its Buffalo,Cheektowaga, and North Tonawanda plants. Said work stoppage is over a grievance which both parties are contractually bound to arbitrate under the terms of the collective bargaining agreement and is in violation of the no-strike provisions of said agreements.

19. Plaintiff has, in good faith, performed all requirements and conditions of said collective bargaining agreement and in particular has been and is ready and willing to expeditiously process any grievance or proceed to arbitration concerning the grievance or dispute.

20. Plaintiff has requested, in writing, that the Defendant unions and the members who are Plaintiff's employees, cease and desist from said strike and unlawful work stoppage and that said unions order their members to work. (Exhibits "C" and "D").

21. As a direct result of the foregoing illegal acts and conduct of Defendants in violation of the terms of the collective bargaining agreements, Plaintiff has suffered and will continue to suffer permanent and irreparable damage and injury in meeting its overhad expenses, in loss of revenues and loss of profits, by the loss of customers and good will, in meeting deliveries and in the potential permanent loss of customers to competitors.

22. The business of Plaintiff is competitive with that of companies producing similar products. Valuable good will and customer relationships have been developed by Plaintiff over a period of years as a result of its prompt, efficient and satisfactory service to its customers.

23. Plaintiff his no adequate remedy in a civil action at law since the delays incident to obtaining relief by way of a civil action at law for damages would result in serious and irreparable damage to Plaintiff's business before such legal relief could be obtained, and to endeavor to sue Defendants in a civil action or actions at law would not prevent a continuance of the illegal acts and conduct nor could all of the injury suffered by Plaintiff be recovered in the form of money damages.

24. If said illegal acts and conduct of Defendants are permitted to continue, Plaintiff will, as a result thereof, suffer more from the denial of an injunction than the Defendants will from its issuance, and as to each item of relief prayed for, greater injury will be inflicted upon Plaintiff by denial of relief than will be inflicted on Defendants by the granting of relief.

25. Plaintiff will suffer further irreparable injury and damage in meeting its overhead expenses, in loss of revenues, and the loss of profits, by the loss of customers and good will, in meeting deliveries and in the potential permanent loss of customers to competitors as a result of the illegal acts and conduct of the Defendants unless a temporary restraining order is issued by this Court restraining and enjoining Defendants from continuing said illegal acts and conduct pending a hearing on Plaintiff's application for a preliminary injunction.

26. On November 26, 1974, Plaintiff notified Defendants' counsel that a complaint would be filed in this Court seeking a temporary restraining order.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants, and each of them, jointly and severally, as follows:

(a) That temporarily and until the final termination of this suit, the Defendants, their officers, agents, servants, representatives, members and employees, and all those in active concert or participation with them who receive actual notice of the order and each of them, be enjoined and restrained from in any manner authorizing, instigating, encouraging, causing, assisting or participating in any strike, work stoppage or other interference or interruption with Plaintiff's operations at its Buffalo, Cheektowaga and North Tonawanda plants in order to force, induce, solicit, encourage or require Plaintiff to resolve a dispute which is covered by the grievance and arbitration provisions of the collective bargaining agreements.

(b) That the Plaintiff and the Defendants submit, as soon as practicable, to the grievance procedure and arbitration in accordance with the applicable provisions of the collective bargaining agreements between them the dispute between them relating to work performance of truck drivers or any other underlying dispute.

(c) That it be further ordered that the Defendants, their officers, agents and representatives, immediately direct all employees represented by the Defendant unions and employed by Plaintiff to return to work.

(d) That upon the hearing of this action, Plaintiff's application prayed for above be made permanent.

(e) That Plaintiff be allowed compensatory damages as against all of the aforenamed Defendants.

(f) That Plaintiff be allowed attorney fees and the costs of suit.

(g) That Plaintiff be granted such other relief as the Court may deem appropriate under the circumstances.

Dated: NOVEMBER 26, 1974

Jeremy V. Cohen, Esq.
of counsel

FLAHERTY, COHEN, GRANDE & RANDAZZO, P.C.
Attorneys for Plaintiff
Office and Post Office Address
1016 Liberty Bank Building
Buffalo, New York 14202
(716) 853.7262

STATE OF NEW YORK)
: ss
COUNTY OF ERIE)

JEREMY V. COHEN, being duly sworn, deposes and says that he is the Attorney for Buffalo Forge Company, plaintiff in this action; that he prepared the foregoing complaint for injunctive relief on behalf of plaintiff; and that the matters and facts contained in it are true and correct to the best of his information, knowledge and belief.

Jeremy V. Cohen

Subscribed and sworn to
before me this 26th day
of November, 1974.

Mary Jane Matyjakowski

MARY JANE MATYJAKOWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 197[illegible]

STATE OF NEW YORK)
: ss
COUNTY OF ERIE)

DAVID R. NEWCOMB, being duly sworn, deposes and says that he is the President of BUFFALO FORGE COMPANY, the corporation named in the within entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by Buffalo Forge Company is because Buffalo Forge Company is a corporation and the grounds of his belief as to all matters in said complaint not stated upon his own knowledge are investigations which deponent has caused to be made concerning the subject matter and information acquired by deponent in the course of his duties as an officer of said corporation and from the books and papers of said corporation.

David R. Newcomb
David R. Newcomb

Subscribed and sworn to
before me this 31 day
of December, 1974.

Jeremy V. Cohen

JEREMY V. COHEN
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1975

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Agreement

Between

BUFFALO FORGE COMPANY

BUFFALO, NEW YORK

And

UNITED STEELWORKERS
OF AMERICA
AFL-CIO
LOCAL No. 1874

Dated January 9, 1973

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EXHIBIT A

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AGREEMENT

Made this 9th day of January, 1973 between BUFFALO FORGE COMPANY, and/or its successors or assigns, BUFFALO, NEW YORK (hereinafter referred to as the "Company") and UNITED STEELWORKERS OF AMERICA, AFL-CIO (hereinafter called the "Union") on behalf of itself and members of Local Union No. 1874, United Steelworkers of America, Buffalo Forge Company employees.

SECTION I
INTENT OF THE AGREEMENT

1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the employer and the employee, and to set forth herein the basic agreement covering the rates of pay, hours of work and conditions of employment to be observed between the parties hereto consistent with the principle of a fair day's work for a fair day's pay. The Union re-emphasizes its agreement with the objective of achieving the highest level of employee performance and efficiency consistent with safety, good health and sustained effort.

2. The Company and the Union encourage the highest possible degree of friendly, cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends primarily on more than words in a Labor Agreement, that it depends primarily on attitudes between people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of and regard for the respective rights and responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of the Labor Agreement

demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that Company and Union officials, whose duties involve negotiations of this Labor Agreement are not anti-Union or anti-Company but are sincerely concerned with the best interests and well being of the business and all employees.

3. It is understood and agreed that this Agreement pertains to all production, maintenance employees and truck drivers of the 490 Broadway and 360 Sycamore Street, Buffalo, New York, and 505 Duke Road, Cheektowaga, New York plants of Buffalo Forge Company except office, clerical, supervisory employees who ring the office clocks, stockchasers who ring the office clocks, timekeepers, guards, plant clerks, outside service employees and all other salaried employees; and to said plants upon their relocation within the City of Buffalo or the adjacent towns.

SECTION II
RECOGNITION

4. The Company recognizes the Union as the sole collective bargaining agency for all employees of the Company, as defined in Section I, Paragraph 3.

5. All employees in the bargaining unit who, upon the execution of this Agreement by both parties, are members of the Union in good standing, shall maintain membership in the Union during the term of this Agreement, as a condition of employment, to the extent of paying the periodic membership dues as provided for in this Agreement.

6. Any employee in the bargaining unit who, on the effective (execution) date of this Agreement, is not a member of the Union, and any employee thereafter hired, as a condition of employment shall acquire and maintain membership in the Union on or after the thirtieth (30th) day worked after the effective (execution)

date of this Agreement or on or after the thirtieth (30th) day worked following the beginning of his employment, whichever is later, to the extent of paying the initiation fee and the periodic membership dues required of all union members as provided for in this Agreement.

7. Within fifteen (15) calendar days after this Agreement is signed, the Union will furnish in writing to the Personnel Manager, the names and titles of its authorized representatives and designated representatives. Thereafter any changes thereto will be promptly furnished in writing to the Personnel Manager. Within the same time periods, the Company will furnish, in writing, to the Union President the names and titles of its supervisors of bargaining unit personnel.

8. Any dispute arising as to employees' membership in the Union may be submitted for determination by an Arbitrator to be appointed in a manner provided in this Agreement. The decision of the Arbitrator shall be final and binding upon the parties.

9. For all employees who were members of the Union on the date of the signing of this Agreement and for all employees who after the signing of this Agreement become and remain members of the Union during the term of this Agreement, the Company will continue to check-off monthly dues and initiation fees, as designated by the International Secretary-Treasurer of the Union as membership dues in the Union on the basis of and for the term of individually signed voluntary check-off authorization cards heretofore or hereafter submitted to the Company. The Company shall promptly remit any and all amounts so deducted to the International Secretary-Treasurer of the Union at Five Gateway Center, Pittsburgh, Pennsylvania 15222. The following general conditions will be applicable.

a. An employee who quits, is laid off, or is discharged for cause shall have the current month's dues deducted unless exonerated therefrom in accordance with the terms of Paragraph 9 (k).

b. New check-off authorization cards for new members will be submitted to the Company through the Financial Secretary of the Local Union at intervals no more frequent than once a month. On or before the first Friday of each month the Union shall submit to the Company a summary list of cards transmitted in each month.

c. Dues for a given month shall be deducted from the check received on the second (2nd) payday in that month. Deductions will be made on the basis of authorization cards submitted to the Company commencing with respect to dues for the month in which the Company receives such authorization cards.

d. Unless the Company is otherwise notified, the only Union membership dues to be deducted for payment to the Union from the pay of the employee who has furnished an authorization shall be the monthly Union dues. The Company will deduct initiation fees when notified, by notation on the list referred to above, and uniform assessments as designated by the International Secretary-Treasurer.

e. The Company shall, promptly after the close of each month, submit to the Local Union a list showing the names of all members, and indicating for each member whether dues were deducted in that month and where they were not deducted, the reason therefor.

f. A month's dues is defined as two (2) times the employee's average hourly earnings in accordance with the following method of computation:

(1) The "reference period" which will be used to compute an employee's average hourly earnings for dues deduction purposes shall be the same payroll week from which the dues are being deducted.

(2) Average hourly earnings shall be computed by dividing an employee's gross earnings during the reference period by the total of his number of hours worked and all his hours of paid absence as provided by the terms of this Agreement.

(3) If an employee has no earnings in the "reference period", the Company will compute the dues deduction for such an employee using that employee's base hourly rate in effect during the "reference period".

(4) In the event an employee's earnings are insufficient to cover his dues to be deducted on the second (2nd) payday in any month, his dues shall be deducted from his next pay in that same month.

(5) Individual members of the Local Union shall be entitled to exoneration from the payment of dues for any month for which they have not become entitled to five (5) days pay or equivalent in wages and benefits in lieu of wages.

g. A "Summary of Union Dues" deductions (Form 115) will be sent to Pittsburgh with the monthly remittance and a copy will be supplied to the Local Union.

h. The Union agrees that it shall indemnify, defend and save the Company harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not by the Company pursuant to Section Two (2) of the Collective Bargaining Agreement and the dues provision of the United Steelworkers of America.

10. All bargaining unit employees will be promptly furnished with a copy of the Agreement and pension-insurance booklet. All newly hired employees will receive these documents at time of hire.

SECTION III
RESPONSIBILITIES OF THE PARTIES

11. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this Agreement.

12. The Union (its Officers and representatives at all levels) and all employees are bound to observe the provisions of this Agreement.

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13. The Company (and its Officers and representatives at all levels) is bound to observe the provisions of this Agreement.

14. In addition to the responsibilities that may be provided elsewhere in this Agreement, the following shall be observed:

a. The Union and its members will not solicit membership on Company time.

b. There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved.

c. There shall be no discrimination, restraint or coercion against any employee based on consideration of race, creed, color, sex, age, national origin or membership in the Union.

d. There shall be no lockout.

e. When any employee who is suspected of violating the Company's rules of conduct is brought to the Personnel Office, the Union shall be notified immediately and be given the opportunity to be present when said employee is being interrogated. The Union reserves the right to advise the employee during the course of the investigation. Before written warning, discharge or disciplinary suspensions are invoked by the Management, a review of the matter will be made with the employee

affected and his Union Grievance Chairman or the Chairman's designated representative; or in the event of the employee's absence, with the Union Grievance Chairman or the Chairman's designated representative. If a dispute arises between a foreman and an employee concerning the employee's responsibilities as an employee, he will be entitled to Union representation at that time.

f. Disciplinary suspensions invoked by night shift foremen cannot be for more than the balance of that shift; and further discipline, if any, will be determined at a meeting with the Union Grievance Chairman or his designated representative and the Personnel Manager or his designated representative on the succeeding day shift.

SECTION IV
HOURS OF WORK

15. Except for powerhouse employees, the regular work week shall be five (5) eight (8) hour days from Monday through Friday inclusive. The regular work week shall commence on Monday and end on Sunday. The normal shifts will be as follows:

1st shift ..... 8:00 a.m. to 4:30 p.m.

2nd shift ..... 4:30 p.m. to 1:00 a.m.

Changes in the above stated normal shift hours may be made only by mutual written agreement of the Company and the Union.

(a) If it becomes necessary for any employees to work on production a third shift, this shift shall be scheduled from 1:00 a.m. to 8:00 a.m. Employees on this shift arrangement shall receive a twenty (20) minute paid lunch period.

(b) If an employee is required to work beyond ten (10) hours in any one (1) day, he will receive a twenty (20) minute paid lunch period at the end of the first ten (10) hours worked of his shift.

16. Time and one-half shall be paid:

(a) For time worked in excess of eight (8) hours in any one (1) day.

(b) For time worked in excess of forty (40) hours in the employee's work week.

(c) For time worked on any shift which starts on Saturday.

17. Double time shall be paid:

(a) For time worked during a shift which starts on Sunday.

(b) For time worked on any shift which starts on the following holidays:

New Year's Day
Washington's Birthday
Good Friday
Decoration Day
Fourth of July
Labor Day
Election Day (First Tuesday after first Monday in November)
Thanksgiving Day
Day after Thanksgiving
Christmas Day

(c) For pay purposes, anytime a holiday is observed on a day other than the calendar day on which it falls, the day of observance will be recognized as the holiday.

18. All employees who have been on the payroll at least forty-two (42) calendar days and who have worked at least one (1) full shift during the thirty (30) calendar days immediately preceding each of said holi-

days and who are on the payroll and not required to work shall receive eight (8) hours holiday pay at their base hourly rate including shift premium if applicable; except employees who have worked incentive shall be paid their average straight time earned rate during the week in which the holiday is observed. If one of the holidays falls during an employee's vacation period, the employee shall be paid for the holiday according to his applicable rate during the last week in which he worked. Employees who are required to work will receive the above eight (8) hours holiday pay in addition to their pay for hours worked provided in paragraph 17.

19. Power house employees shall be paid at the rate of time and one-half for all work performed on the sixth (6th) day in the regularly scheduled work week and at double time their base hourly rate for all work performed on the seventh (7th) day worked in the regularly scheduled work week. Absence with permission of the Company will be considered as days worked to carry out the intent of this paragraph.

20. It is expressly understood and agreed that in no instance will overtime be paid twice for the same overtime.

21. It is understood and agreed that while the hours of work set forth herein shall be established as normal work day and work week, the Company does not guarantee full-time employment to any employee.

22. (a) Any employee who works on a regular work day at his regular work is deemed to be instructed to report for work on the next succeeding scheduled work day unless the Company notifies the employee not to report for work, with notice also to the Union.

(b) It is agreed that an employee who is instructed to report for work and who finds no work available shall be given four (4) hours of other work at his regular hourly rate, or four (4) hours pay in lieu of same, at the option of the Company. This provision shall not apply

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if a shutdown occurs caused by reasons beyond the control of the management; such as labor disputes (involving the Company's employees), riots, public utility failures and Acts of God.

(c) If an employee is not notified the day previous of a change in his work schedule, he will be permitted to work his previously established schedule. Notification will be made by Management representatives or by leadmen under instructions of a Management representative; but the Management representative will be responsible.

23. An employee who completes his scheduled shift and returns home and is called back to work shall be paid as follows at the applicable premium rate plus shift premium for completion of the job for which he was called in. The employee may elect to leave the plant upon completion of the job. If the employee completes the job:

—in one (1) hour or less—two (2) hours pay
—in two (2) hours but more than one (1) hour—three (3) hours pay
—in more than two (2) hours—four (4) hours pay

24. The Union agrees that all employees covered by this Agreement are to work overtime when requested by the Company, unless reasonable personal reasons prevent individual employees from so doing.

25. The five (5) minute wash up period will be allowed to each employee prior to the end of the employee's hours of work on each shift.

SECTION V
ADJUSTMENT OF GRIEVANCES

26. Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this Agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made

to settle such differences immediately in the following manner:

27. First. Between the aggrieved employee and the foreman of the department involved; but, the employee's right to Union representation will not be denied. Neither the employee nor the management representative nor the Union representative will make agreements which conflict with the other terms and provisions of this Agreement. The Foreman shall answer the grievance within two (2) working days after presentation, stating the reasons for granting or denying the grievance.

28. Second. In the event the grievance is not satisfactorily adjusted at Step 1, the aggrieved employee may, within two (2) work days after receipt of the foreman's answer refer the grievance to the Superintendent of the department involved. The employee shall be accompanied by his Union representative. The Superintendent shall answer the grievance within three (3) working days after referral to this Step 2, stating the reasons for granting or denying the grievance.

29. Third. In the event the grievance is not satisfactorily adjusted at Step 2, the aggrieved employee, members of the Grievance Committee designated by the Union, within five (5) working days after receipt of the Superintendent's answer, may refer the grievance to the Personnel Manager. Grievances advanced to this Step shall be presented in writing upon forms USA 122, provided by the Union, and approved by the Company. A suitable numbering system for grievances shall be adopted by mutual agreement. Such written grievances shall be accepted and dated by the Personnel Manager at the time of presentation. The grievance will be prepared by the Chairman of the Grievance Committee and signed by him and those involved. The Personnel Manager or his designated representative shall answer the grievance within five (5) working days after termination of discussion at this Step. Grievances involving lost

time or money may be directly presented at the Third Step and reduced to writing immediately. Discussion of the grievance at this step shall be scheduled to be held within five (5) working days after referral to this step.

30. Fourth. In the event the grievance is not satisfactorily adjusted at Step 3, the Grievance Committee or their representative may, within five (5) working days after receipt of the third step answer refer the grievance to the executives of the Company or their representatives. When a grievance from a department which has no representative on the Grievance Committee is being considered, the Committee, at its discretion, may call in one of the representatives of such department. The Company shall answer the grievance within five (5) working days after the termination of discussions at this Step. Discussion of the grievance at this Step shall be scheduled to be held within five (5) working days after referral to this Step.

31. Fifth. In the event that the grievance is not satisfactorily adjusted at Step 4, the Grievance Committee, within five (5) working days after receipt of the fourth step answer, may refer the grievance to the Representative of the Company and Representatives of the International Union. The grievance shall be answered in writing within five (5) working days after the termination of discussions at this Step.

32. Sixth. In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company. Such notice shall be served upon the other party within five (5) working days after receipt of the answer in the Fifth (5th) Step. The party requesting arbitration shall apply to the Federal Mediation and Conciliation Service for an arbitrator, who shall be jointly selected by the parties. The arbitrator shall not have the power to add

to, to disregard or modify any of the terms and conditions of this Agreement. The decision of the arbitrator shall be binding upon the parties. The expenses of arbitration and the compensation for services rendered by the arbitrator shall be shared equally by the parties.

33. The Grievance Committee shall consist of not less than three (3) employees and not more than nine (9) employees designated by the Union unless otherwise agreed to by mutual consent, who will be afforded such time off without pay as may be required.

34. If requested, regular meetings will be held between Management and the Union Grievance Committee at 10:00 a.m. on the first and third Tuesday in each month, or as otherwise scheduled by mutual consent.

A regular monthly meeting will be held with four (4) Union representatives, including the President and a Plant 2 representative, and Management to be scheduled on either the first or third Tuesday of the month with a prepared agenda dealing with matters of policy rather than specific grievances.

35. All grievances shall be considered carefully and processed promptly in accordance with the applicable procedure of this Agreement. Postponement of grievance schedule to be only by written agreement. "Policy grievances" may be submitted by either the Union or the Company directly at the Fourth Step.

36. In case of grievances involving loss of time or money, if decision is in favor of the aggrieved employee, the Company shall pay the aggrieved employee retroactive to the date of notification in writing of such grievance by the Union to the Personnel Manager, who will acknowledge and date same.

37. It is agreed that any member of the Grievance Committee may have the right to visit departments other than his own at reasonable times for the purpose of transacting the legitimate business of the Union, after receiving permission from his department foreman or his

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designated representative. Before transacting any business in a department other than his own, the committeeman shall first obtain the permission of the foreman in the department to be visited. In no event shall a committeeman visit a department other than his own, which is now or hereafter designated as confidential by an agency of the United States Government.

38. In case of a last warning or discharge or disciplinary suspension, the Chairman of the Grievance Committee and/or his representative will be requested to be present when this action is taken by the Company. Written notice, in triplicate, setting forth the reason for the Company's action shall be provided as follows: one (1) copy to the Chairman of Grievance Committee and/or his representative, one (1) copy to the employee affected and one (1) copy to be retained by the Company, the Union to initial the Company's copy. In the event a discharged employee desires to enter complaint concerning his discharge, he shall immediately deliver same to the Chairman of the Grievance Committee, who shall file same with the Personnel Manager within two (2) work days after discharge—Saturdays, Sundays and holidays excepted. The copy initialed by the Union and given to the Company is intended as a receipt and not as an agreement. Discipline which was invoked prior to November 17, 1969, will not be considered in subsequent cases of alleged misconduct.

39. A meeting of the Grievance Committee, Personnel Manager and his designated representatives shall be held within two (2) work days after filing of complaint and the discharged employee making the complaint shall appear in person at such meeting, — Saturdays, Sundays and holidays excepted.

40. If the complaint is not settled at the meeting referred to in Paragraph 39 above, it may be treated as a grievance beginning at the Fifth (5th) Step of this grievance procedure provided the Company is notified in writing within three (3) work days from the time the

Union is notified of the Company's answer — Saturdays, Sundays and holidays excepted.

41. If the discharged employee fails to file complaint in writing within the specified time or fails to appear at the hearing, or if at such hearing the employee is found to have been properly discharged, his discharge shall be absolute as of the date of the discharge.

42. If the discharged employee is found at the hearing to have been improperly discharged, he shall receive his average hourly rate of compensation for the time he was out of the employ of the Company as a result of this discharge.

SECTION VI
MANAGEMENT

43. Subject to the provisions of this Agreement, the management of the plant and the direction of working forces including the right to hire, suspend or discharge for proper cause, transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company.

SECTION VII
MILITARY SERVICE

44. a. Any employee entering into military service of the United States shall be granted a military service leave of absence. Such employee's seniority rights, reemployment rights or other employment rights shall be determined pursuant to the terms of this Agreement, subject to the provisions of the Universal Military Training and Service Act. Such determination shall not constitute an amendment or modification of this Agreement.

b. Any employee who has completed his probationary period who is a member of a reserve component of the United States Armed Forces (including the National Guard) will be granted a military leave of absence to participate in required annual active duty training. Any employee seeking a military leave of absence shall notify

his supervisor and the Personnel Office and supply a copy of his military orders to the Personnel Office as far in advance as possible before his required training dates.

c. An employee on leave of absence for annual active duty training per Paragraph 44b. above, shall be paid the difference between his military pay and allowances and his base rate multiplied by eight (8) hours for the number of normal work days (Monday through Friday) that he is absent from work, up to a maximum of ten (10) work days. Payment will be made upon the employee submitting to the Personnel Office an official statement of his reserve duty time and income. In no event shall payment be made more than once in any year.

SECTION VIII
VACATIONS

45. a. Eligibility: Employees to qualify under the following vacation plan must have worked and received pay in at least twenty (20) weeks during the computation periods (as shown in Paragraph 47c. below) for which vacation is being paid. Time lost because of illness, injury, jury duty, military service including National Guard or Reserves covered by the then existing statutes relating to the "Universal Military Training and Service Act" will be counted as time worked for vacation eligibility purposes, provided, however, that in any event an employee must have worked at least five (5) days during the said computation period.

b. The employee must be on the payroll on July 27, 1973, August 2, 1974 and August 1, 1975 to be entitled to receive vacation benefits in each of those respective years, except as provided in Paragraph 48.

46. a. The following vacation time off and Special Vacation Allowance shall be granted during the term of this Agreement:

One (1) Year of Service— One (1) Week Vacation	$ 20.00
Five (5) Years of Service— Two (2) Weeks Vacation	40.00
Ten (10) Years of Service— Three (3) Weeks Vacation	60.00
Fifteen (15) Years of Service— Three and one-half (3½) Weeks Vacation	70.00
Twenty (20) Years of Service— Four (4) Weeks Vacation	80.00
Twenty-five (25) Years of Service— Five (5) Weeks Vacation	100.00

The Special Vacation Allowance stated above shall be paid each year to active employees on the payroll July 27, 1973, August 2, 1974 and August 1, 1975 at the time their vacation time off is taken but shall not be applied to employees referred to in Paragraph 48.

b. The amount of vacation benefits shall be determined according to the employee's accumulated period of seniority as of August 1 of each of the respective years listed above.

c. If an employee has an employment anniversary date after August 1, but prior to January 1, which would entitle him to additional vacation benefits in that calendar year, he will receive the additional vacation allowance on such anniversary date. The employee must be on the payroll on this anniversary date to receive the additional vacation allowances.

47. a. Computation: A week of vacation allowance shall be the employee's Average Hourly Earned Rate during the Computation Period multiplied by the average number of hours he has worked during the Computation Period, or forty (40) hours, whichever is greater.

Step 1
The accumulated total of the "Gross Amounts" shown on the employee's pay stubs which include incentive earnings, shift premium, holiday pay and overtime premium) will be divided by the total day work plus piece work hours paid (which include paid holiday hours) to obtain the employee's Average Hourly Earned Rate.

Step 2
The total number of day work plus piece work hours paid (which include paid holiday hours) will be divided by the number of weeks in the Computation Period (less any credited weeks off per Paragraph 47b below) to obtain the employee's average number of hours per week.

Step 3
The Average Hourly Earned Rate multiplied by the average number of hours per week equals one (1) week of vacation pay, unless the minimum allowance applies.

b. If an employee is paid for an entire week because of vacations taken during the Computation Period, or is absent from work up to ten (10) weeks during the Computation Period because of illness, injury or jury duty, the number of such weeks (and the amount of vacation pay received) shall not be counted in computing vacation pay under Paragraph 47a above. Absence in excess of ten (10) weeks or anytime off due to layoff will not be deducted from the computation of vacation pay.

c. The periods used for the above computation purposes shall be as follows: 1973 vacation, week ending September 3, 1972 through week ending July 1, 1973. 1974 vacation, week ending September 2, 1973 through week ending June 30, 1974. 1975 vacation, week ending September 1, 1974 through week ending June 29, 1975.

d. The following minimum allowances shall apply:

Vacation Benefit		Hours of Vacation Pay
1	Week	40 Hours
2	Weeks	80 Hours
3	Weeks	120 Hours
3½	Weeks	140 Hours
4	Weeks	160 Hours
5	Weeks	200 Hours

48. a. An employee who otherwise qualifies for a vacation allowance under the above plan, and who dies or retires in the period between the beginning of the Vacation Computation Period and March 1 of the year in which he would have otherwise received a vacation allowance, shall, or his designated beneficiary shall receive an allowance which shall be computed as follows:

One (1) Week	2%
Two (2) Weeks	4%
Three (3) Weeks	6%
Three and one-half (3½) Weeks	7%
Four (4) Weeks	8%
Five (5) Weeks	10%

of his gross earnings during the computation period referred to above.

b. If an employee commences drawing pension benefits between March 1st and August 1st (inclusive), or dies during that period, he shall, or his designated beneficiary shall, receive his full vacation allowance.

c. An employee who dies, retires under the terms of the Pension Agreement, or retires under a Public Pension, as defined in the Pension Agreement, shall, or his designated beneficiary shall, be paid accrued vacation pay within one (1) month after the last day of work.

d. An employee who has completed five (5) or more years of continuous service and who terminates his employment by quitting between the end of the Computation Period and August 1st of any year, shall receive the appropriate allowance under Paragraph 48 (a) if he has worked and received pay in at least twenty (20) weeks during the Computation Period.

49. An employee who does not qualify for a vacation because he had not worked in at least twenty (20) weeks during the Computation Period, may become eligible to qualify for a vacation as a result of the following alternate procedure. An employee with less than twenty (20) weeks of work during the Computation Period will qualify for a vacation providing he has worked in at least twenty-six (26) weeks during the fifty-two (52) week period immediately preceding the date of eligibility for the year in which this alternate procedure is being used.

50. The following shall apply as General Vacation Practices and Procedures:

a. All vacations of two (2) weeks or less will be taken during the plant shut-down.

b. Any employee requested to work during his vacation (first and second week) and who takes his vacation earlier, he will receive his vacation allowance at time of his earlier vacation.

c. If an employee is absent from work due to death in his immediate family as defined in the Basic Agreement, he must take that vacation time at a re-scheduled time period. Same to apply if absence is due to Jury Duty, Holiday and Military Service.

d. Notices regarding work opportunities during Vacation Shut-down will be posted on all Shop Bulletin Boards within a reasonable time prior to Vacation Shut-down.

e. Preference in filling such work opportunities will be given to employees in the following order, according to seniority:

(1) No vacation entitlement—One (1) week of work.

(2) One (1) week of vacation entitlement—One (1) week of work.

(3) A second week of work for those with no vacation.

f. Any employee who volunteers to work during the vacation shut-down on available work other than his regular job will be paid as follows:

(1) If the vacation job is in a lower Labor Grade the employee will be paid the maximum of that Labor Grade.

(2) If the vacation job is in the same Labor Grade he will carry his base rate with him.

(3) If the vacation job is in a higher Labor Grade, the employee will be paid at the midpoint of that Labor Grade.

g. Changes in vacation schedules will be requested by the Company on a voluntary basis as much in advance as feasible.

51. The following shall apply to those employees receiving three (3) or more weeks' vacation allowance:

a. All vacation payments will be paid to the employee on the last day worked preceding his week or weeks.

b. Each week of prepaid vacation allowance will be computed by multiplying an employee's average rate by forty (40) hours.

c. Employees will be contacted as promptly as possible to ascertain their choice of vacation weeks. In the event of conflict, preference will be given to the employee with the greatest length of service. Employees who have not exercised their choice of weeks will be required to accept open dates. Vacation, so far as feasible, will be granted by the Company at the time most desired by employees.

d. To receive an advance vacation allowance check, notification must be made through his supervisor and must be made one (1) week preceding the last day worked on which the employee would expect to receive his advanced vacation allowance.

e. In the event a vacation is being changed to a later date the new date must be agreed upon with his supervisor one (1) week preceding the last day worked on which the employee would expect to receive his advanced vacation allowance.

f. Any employee who elects to take a week of vacation in single days will receive the week's vacation allowance pay on the Friday of the week preceding that in which the fifth (5th) day of vacation is taken.

g. Time away from work of less than eight (8) hours will not be considered as a vacation.

h. However, during the Baseball World Series held in October, an employee may designate up to but not more than four (4) one-half (½) days as vacation and will be paid his vacation allowance on the last day worked preceding the time off.

i. If an employee is absent from work due to illness or injury, he may credit such full days absence against his third, fourth, fifth or more vacation providing he notifies his supervisor who in turn will notify the Payroll Department within one (1) week following his return to work.

j. If, on or before October 1, an employee fails to take his vacation, and fails to make his intention known as to when he will take his vacation, he will then be called to the Personnel Office together with a Union representative at which time the said employee will be asked to fix his vacation time off. Upon failure to do so the employee will be required to take his vacation days without the approval or agreement with the employee.

k. All vacation time due an employee must be taken within the calendar year and cannot be accrued.

SECTION IX
SENIORITY

52. The right of an employee to work shall be based on, first, seniority of employment from date of last hire, and, second, ability, providing that ability is equal. Any questions of ability to perform work shall be determined by joint conference between the Company and Union in the event of dispute.

53. All newly hired employees shall be considered on a probationary and temporary employment for thirty (30) days worked from date of their employment and shall not be placed on the seniority list during that time. After thirty (30) days worked from date of employment the names of such employees will be placed on the seniority list in accordance with their original date of hire.

54. The Company may lay off or discharge newly hired probationary employees without limitations.

55. In the event two or more employees have the same seniority date, and a question develops in which seniority is a determining issue, the tie in seniority will be settled by using the date and time that the respective employees filed their applications at the Buffalo Forge Company Employment Office.

56. The Company will furnish the Union with a seniority list of all employees on or about April 1 of each year.

57. a. Any employee who had been transferred to a supervisory job prior to November 17, 1969, shall continue to retain his seniority in the bargaining unit, accumulated to that date.

b. An employee who has been transferred to a supervisory job shall not be eligible for union membership during the period he is outside the bargaining unit.

c. Any employee who is transferred to a supervisory job on or after November 17, 1969, shall continue to retain his seniority in the bargaining unit, accumulated to the date of the transfer. If, within six (6) months from the date of the transfer, the employee is returned to his previous job in the bargaining unit he shall retain his seniority accumulated to the date of his return.

58. Employees outside the Bargaining Unit shall not perform work normally performed by employees in the Bargaining Unit except for the instruction and/or training of employees.

59. In the event the Company establishes a formal Training Program to instruct and train a group of employees in specialized skills, such program will be conducted under the direction of a foreman. The Company will select instructors required, through the provisions of this Agreement, from among those available and qualified employees in the job classification involved in the program. The term "Instructor" means an employee whose primary function is to train and instruct other employees involved in the training program. In each such instance, a job description and wage rate will be developed in accordance with the provisions of this Agreement and the method of job evaluation in effect during the term of this Agreement.

60. Any employee transferred to a job out of the Bargaining Unit, other than a supervisory job, will continue to accumulate seniority for a period not to exceed six (6) months. If the employee remains out of the Bargaining Unit more than six (6) months his seniority will terminate.

61. Continuous service is considered broken by:

a. Twenty-four (24) consecutive months of unemployment due to any cause, except as otherwise provided in Paragraph 62, shall terminate service provided, however, that during an indefinite lay-off for causes beyond

his control any former laid off employee of the Company is re-employed after the expiration of such twenty-four (24) month period, shall upon re-employment reacquire the seniority he enjoyed at the time of termination of his previous period of employment, but the time in excess of twenty-four (24) months will be deducted from continuous service.

b. Resignation of the employee.

c. Discharge of the employee by the Company for just cause.

d. Absence for five (5) consecutive working days without permission or without proper notification to the Company unless the employee can show just cause that the failure to report was due to circumstances beyond his control.

e. Failure to return to work after a layoff within five (5) days after mailing of a notice to report by the Company sent by registered mail to the last address of the employee as it appears on the records of the Company — Saturdays, Sundays and Holidays excepted. Provided, however, that if the employee contacts the Company within three (3) days from the mailing of a notice and if he is on other employment at that time, he may have up to five (5) working days to return to work from the date that he contacts the Company.

62. Continuous service shall not be broken by the following incidents, nor any deductions made from seniority for time away from work because of such incidents:

a. Disability because of industrial accident.

b. Vacation as awarded by the Company under this contract.

c. Leave of absence not exceeding forty-eight (48) months because of illness or incapacity not due to industrial accident, however, if re-employed, the time in excess of forty-eight (48) months is to be deducted.

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d. Leave of absence for any of five (5) members of the Local Union who may serve full time on the payroll of the International Union.

e. Jury duty or legal summons.

f. Absence with consent of the Company not exceeding sixty (60) calendar days, or an extension of a further thirty (30) calendar days.

g. Reduction of force or layoff not exceeding twenty-four (24) months.

h. Discharge for cause if employee so discharged is reinstated within ninety (90) calendar days after discharge.

i. During any layoff the employee shall report to the Employment Department at least once each calendar month, either in person or by letter. When such report is made a receipt will be handed or mailed to the employee, with a copy to the Union; the Union to initial the Company's copy. Failure to report is deemed an interruption of continuous service.

j. The Company will supply the Financial Secretary of the Union with a post card notice of employees who have failed to report seven (7) days prior to the end of each month.

63. The parties have agreed on seniority rights to jobs listed in Exhibit "B" and made part of this Agreement. The parties have agreed to review, update and revise this Exhibit compatible with the installation of the CWS Job Rating Plan when said Plan is installed.

64. a. An employee shall enjoy full seniority from date of last hire on all "jobs" he has worked on at Buffalo Forge Company. "Jobs" shall be determined according to the job titles and labor grades contained in the National Metal Trades or C.W.S. job rating plan, whichever is applicable.

b. An employee who has been permanently assigned to a job shall not acquire seniority in that job until such time as he has completed thirty (30) days of work or two hundred forty (240) hours of work in the job, whichever occurs first. If a lay-off or reduction in force interrupts the above mentioned period, the employee shall be returned directly to the job, when work becomes available, and credited with the appropriate number of days or hours already worked on that job.

65. a. In the event of a layoff or reduction in force affecting any job classification within Labor Grades 10 through 7, or job classes 1 through 9 (CWS), employees will be laid off in accordance with their seniority. Otherwise, those employees not at the maximum rate in said job classifications will be laid off first in accordance with their seniority.

b. An employee being laid off from a job assignment shall first exhaust his seniority right to displace a less senior man in his job code number on the shift and in the plant of his preference.

(1) If the employee elects to move to another job rather than displace a less senior man in his job code number, he will forfeit his recall rights to the job he is leaving except as provided in paragraph (2) and (3) below.

(2) Health or other legitimate reasons if agreed to by both the Company and the Union, will be considered in applying seniority under this provision.

(3) In any event, the employee retains his seniority in the job he is leaving for future bumping or bidding opportunities.

c. If the employee does not have the seniority to remain in his code number, he will have a choice of:

(1) Returning to any job in which he has previously worked and established seniority (providing there is a less senior employee or an opening in such job).

(2) Or, he may apply his seniority under Exhibit "B" to displace the least senior employee in the group of jobs in the same or a lower labor grade, in the shift of his preference.

66. Where the employee about to be laid off, is at the time of such lay-off in a job title which has more than one classification such as "A" or "B" or "A" "B" and "C" and he declines to exercise his seniority on any job in his job title, he will be considered as having resigned and his continuous service will be considered broken as provided for in Paragraph 61 b. of the said Agreement.

a. However, such employee having exhausted his right to hold a job in his job title, may then decline to further exercise his seniority and may accept a lay-off to await his recall to a job in the job title in which he was employed at the time of lay-off.

67. Where the employee about to be laid off is, at the time of such lay-off, in a job title with only a single classification he may decline to exercise his seniority, accept a lay-off and await his recall to the job in which he was employed at the time of his lay-off.

68. Laid off employees will be recalled in the inverse order of lay-off. The continuous service of an employee on lay-off, who fails to return to work on recall to his job title as provided in Paragraph 64 and 65 of the said Agreement, will be considered broken as provided in Paragraph 61 e. of the said Agreement. When an employee is recalled to his job classification, he will be promptly assigned to his job.

69. An employee shall not have the right, regardless of seniority, to claim a job in a higher labor grade, except as provided in Paragraph 64.

70. The Company agrees that the order of lay-off and rehiring shall be governed by, first, seniority of employment and second, ability.

71. In the event of an indefinite lay-off, an employee about to be separated from the payroll, will be entitled to work one (1) full shift following the day on which he is notified of the lay-off on either his regular work or work that would be made available to him. The employee may be paid four (4) hours of pay at his base hourly rate in lieu of such notice.

72. a. Employees who return to work following an industrial accident or occupational disease shall be allowed thirty (30) calendar days in the plant upon their return to work, regardless of their seniority. Following the thirty (30) day period they shall resume their original seniority standing.

b. On those occasions when an employee is off a job due to any disability, and in event a more senior employee becomes his replacement, the original employee shall be entitled to return to his job upon termination of his disability. The replacement shall vacate this job and shall be entitled to return to his former job; for future seniority purposes the replacement's seniority on the job involved will be governed by Paragraph 64 and its subdivisions.

73. It is mutually understood and agreed that whenever opportunities are present making occupation desirable by reasons of higher rates of pay, steadier employment, or cleaner or better working conditions, then priority to embrace such opportunities shall be offered to the oldest employee on the basis of seniority. Whenever the question of ability arises, such question shall be decided according to the grievance procedure. Once an assignment of work has been made, then this paragraph cannot be applied to arbitrarily require a reassignment of that work.

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a. The Company will not fail to give consideration to offer recall to their job classification to employees who were laid off (not bumped) from a job classification in any department within six (6) months prior to the working of any regularly scheduled overtime in that job classification in that department when additional work could be accomplished by offering at least eight (8) hours of work in one (1) or more days to such laid off employee.

b. At the time an employee is given an indefinite lay-off, vacant jobs to which he would not be entitled by application of his seniority, may be offered to the employee. Acceptance is on a voluntary basis.

c. After his assignment to a job under the Bidding Procedure, if the employee desires to be returned to his former job, he must make such request before he works thirty (30) days or two hundred forty (240) hours on his new job. He will then be reassigned directly to his former job.

d. If an employee refuses recall to a job to which his seniority entitles him, he will thereby forfeit his right to future recall to that job but he will retain his bumping and bidding rights with respect to that job.

e. In the event of a job vacancy, employees within the job code number will be given the opportunity to fill the vacancy in order of seniority with the understanding that the least senior employee must accept such job, if not otherwise filled.

f. When an employee applies his seniority to bump into a job he must work in that job until he is bumped from that job, or bids off that job, or is recalled to a former job from which he was laid off or bumped.

g. In the event any job vacancies occur to which a laid-off employee would be entitled by reason of his seniority and ability, he will be advised of such job vacancies by the Personnel Department. Laid off employees will also be given consideration, in order of their seniority, for recall to jobs they are able to perform but to which seniority application would not otherwise entitle them.

h. When inequities in the application of seniority are claimed to exist, the matter shall be reviewed by representatives of the Union and the Company and settlement made on a mutually satisfactory basis, and a letter of understanding will be prepared.

i. When productive employees are scheduled to work overtime on an operation, the Company will not fail to consider also the number of service personnel reasonably necessary for that operation and to offer them work.

j. Union representatives and employees not working due to any reason, including jury duty, bereavement leave, etc. (excluding vacations) will receive normal seniority consideration for overtime assignments if they advise the Personnel Office prior to noon Thursday of their availability for week end overtime assignments.

SECTION X
TEMPORARY TRANSFERS

74. The Union recognizes the Company's need to transfer employees on a temporary basis to meet production requirements. The Company recognizes that temporary transfers should not be made for the purpose of depriving employees of their contractual rights; nor should temporary transfers be made on an arbitrary basis.

75. Temporary transfers shall not exceed thirty (30) days worked, except by mutual agreement between the Company and the Local Union.

76. The selection of the employee to be transferred will be communicated to the Departmental Steward or the appropriate Committeeman before the transfer is made.

a. Written notice of all temporary transfers will be submitted to the Local Union Grievance Chairman and the department steward of the department from which and to which the employee is transferred. The notice will report the name, clock number, job code number, present rate of the transferred employee, his new rate, the job code number of the temporary job, the approximate length of the transfer and the reason for the transfer.

77. Whenever it has been determined that a temporary transfer is necessary, the selection of the employees to be transferred will be based first on the seniority and second, on the ability of the employees in the job classification from which the transferred employees are to be selected. If the transfer is of no interest to the senior employees, then, the least senior employees in that classification with the ability will be transferred. Where temporary transfers are necessitated by absence for any reason, the application for seniority and ability may be on a departmental basis.

78. An employee shall not accumulate any seniority rights to any job because of having worked on such job on a temporary transfer. Any experiences that he acquires because of a temporary transfer will not apply in evaluating a[illegible]lity.

79. If a [illegible]porary transfer is made due to a lack of work for more than five (5) consecutive working days, the transferred employee shall exercise his seniority under Paragraph 65.

80. If employees in a job classification, in a department, are working on a regular daily overtime schedule at the time that one or more employees are moved into these job classifications on a temporary transfer, the daily overtime schedules then being worked by the permanent employees in those classifications in the department will be maintained in effect during the period of the temporary transfer. The transferred employees will be offered the overtime opportunities that they would have received had they remained on their own jobs.

81. The following shall apply to an employee when temporarily transferred:

a. To a job in a lower labor grade will be paid his current rate or the maximum rate of the lower labor grade whichever is higher.

b. To a job in the same labor grade, will be paid the maximum rate of the labor grade or one-quarter (¼) step higher than his permanent rate, whichever is higher. The one-quarter (¼) step rate will not apply where essentially the same skills are involved on both jobs. For example: a transfer from one engine lathe to another, etc.

c. To a job in a higher labor grade, will be paid the maximum rate of the job.

d. From a piece work job, his current rate of earnings will be guaranteed, calculated from the employee's average earnings of the previous four (4) calendar weeks.

e. Each week's accumulated time will be paid to the employee with the pay check he receives for the following week's work.

SECTION XI
JOB POSTING

82. a. Before posting a job vacancy, employees on other shifts in the same job classification will be offered the opportunity to exercise shift preference to fill the job vacancy. The job vacancy which remains will then be posted. The successful bidder will accept the job on the shift on which he bids and will not have an opportunity to change shifts in that job until a future vacancy occurs, or he is entitled to exercise seniority due to a lack of work under Paragraph 65.

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b. Any job opening which has been posted, but is not filled, will again be posted after thirty (30) calendar days if the opening still exists.

c. If job openings are not filled by successful bidding, consideration will be given to filling the job with a newly hired probationary employee before hiring a new employee for that job.

d. If a job classification is vacated and is not to be filled, the Local Union will be so advised.

83. Job vacancies shall be posted on plant bulletin boards for two (2) work days during the normal work week; (Monday through Friday) within which period, employees shall have the opportunity to enter bids.

a. Bids are to be filed at the Personnel Office, by the employees at Plant 1; and with the Plant Superintendent or his representative, by the employees at Plant 2.

b. An absent employee may, within the posting period, have a bid filed on his behalf by an authorized representative; providing the absent employee is available for work within fifteen (15) work days after the close of the posting period.

c. A bid acceptance slip showing the date and time the bid was filed, signed by the person accepting the bid, will be given to the bidder at the time the bid is filed.

84. a. Bids will be considered in the order of the seniority of the bidders.

b. Each bidder for a job will be advised of the name of the successful bidder.

c. The successful bidder for a job opening will be assigned to that job within fifteen (15) work days after the close of the posting period. If the successful bidder is not so assigned, he shall be paid his new classification

rate or his present classification rate, whichever is higher, for time worked on his present job after the expiration of the fifteen (15) work days.

85. a. An employee who bids on a job while in a lay-off status, retains his seniority rights to be recalled to the job from which he was laid off.

b. An employee who bids on a job and whose bid is passed because of his inability to perform the job, cannot rebid the same job for a period of at least six (6) months.

SECTION XII
INDIVIDUAL WAGE RATES

86. Where alleged inequalities in specific hourly and piece work rates exist, the matter shall be taken up for adjustment and settlement made on a mutually satisfactory basis by the Grievance Committee of the Union and representatives of the Company. Piece work rates will be made available to the employee or his Steward for the job to which he has been assigned or is actually performing at that time.

87. Where a piece work rate has been set on a job there shall be no change in rate unless there is a change in design, method, or material in which case the Company may re-time the job and adjust the rate to reflect such change. When the question of a piece work rate becomes a grievance, a member of the Grievance Committee will be called to witness the re-timing of the job in question.

88. a. The Company and the Union shall meet to establish the rules, procedures and other matters necessary for the development and maintenance of a mutually agreeable Standard Hour Incentive System, during the term of this Agreement.

b. The Standard Hourly rates for the respective jobs shall be the base rates and minimum hourly guaranteed rates for such incentives.

c. The Standard Hour Incentive System shall become effective and be installed concurrently with the CWS job evaluation program and manual, referred to in Section XIV of this Agreement, in accordance with the procedures set forth in Section XII of this Agreement. During this interim period, the presently existing incentive system shall remain in full force and effect.

SECTION XIII
WAGES

89. a. Effective at 12:01 A.M., October 1, 1972, the following schedule of rates shall apply:

Labor Grade	Min.	¼	Midpoint	¾	Maximum
10					3.52
9			3.52	3.5725	3.625
8	3.52	3.5725	3.625	3.6875	3.75
7	3.625	3.6875	3.75	3.8175	3.885
6	3.75	3.8175	3.885	3.9575	4.03
5	3.885	3.9575	4.03	4.1175	4.205
4	4.03	4.1175	4.205	4.295	4.385
3	4.205	4.295	4.385	4.4875	4.59
2	4.385	4.4875	4.59	4.705	4.82

b. Effective at 12:01 A.M., October 1, 1973, the following schedule of rates shall apply:

Labor Grade	Min.	¼	Midpoint	¾	Maximum
10					3.72
9			3.72	3.7725	3.825
8	3.72	3.7725	3.825	3.8875	3.95
7	3.825	3.8875	3.95	4.0175	4.085
6	3.95	4.0175	4.085	4.1575	4.23
5	4.085	4.1575	4.23	4.3175	4.405
4	4.23	4.3175	4.405	4.495	4.585
3	4.405	4.495	4.585	4.6875	4.79
2	4.585	4.6875	4.79	4.905	5.02

c. Effective at 12:01 A.M., September 30, 1974, the following schedule of rates shall apply:

Labor Grade	Min.	¼	Midpoint	¾	Maximum
10					3.96
9			3.96	4.0125	4.065
8	3.96	4.0125	4.065	4.1275	4.19
7	4.065	4.1275	4.19	4.2575	4.325
6	4.19	4.2575	4.325	4.3975	4.47
5	4.325	4.3975	4.47	4.5575	4.645
4	4.47	4.5575	4.645	4.735	4.825
3	4.645	4.735	4.825	4.9275	5.03
2	4.825	4.9275	5.03	5.145	5.26

90. a. Effective at 12:01 A.M., October 1, 1972, the then existing amount of two dollars eighty-four cents ($2.84) per hour paid for each hour worked piece work will be increased by sixteen cents ($.16) per hour to a total of three dollars ($3.00) per hour.

b. Effective at 12:01 A.M., October 1, 1973, the then existing amount of three dollars ($3.00) per hour paid for each hour worked piece work will be increased by twenty cents ($.20) per hour to a total of three dollars twenty cents ($3.20) per hour.

c. Effective at 12:01 A.M., September 30, 1974, the then existing amount of three dollars twenty cents ($3.20) per hour paid for each hour worked piece work will be increased by twenty-four cents ($.24) per hour to a total of three dollars forty-four cents ($3.44) per hour.

91. The Hourly Rate Schedules and "side car" as shown in Paragraphs 89 and 90 are subject to replacement due to C.W.S. and Incentive System negotiations conducted per paragraph 114.

92. a. The following provisions are hereby established for the advancement of employees through the rate ranges of their respective labor grades.

b. Employees shall progress from the minimum rate to the midpoint rate of their respective labor grade in accordance with the following time schedule:

L.G. 8	3 Months
L.G. 7 & 6	6 Months
L.G. 5 & 4	9 Months
L.G. 3 & 2	12 Months

c. Employees shall progress from the midpoint to the three-quarter (¾) point, and then to the maximum rate in two (2) periods of six (6) months each.

d. The automatic increases described in the above schedules are provided for the purpose of recognizing increased experience and proficiency acquired during the rate progression period. Such increases will be placed in effect one (1) week after the rate change is scheduled to be made. These schedules are the maximum time periods between increases. The Company may grant earlier increases in recognition of superior performance by an employee. If an employee is failing to work-out in a job assignment, he and the Union will be promptly so advised and consulted. The purpose of such discussion will be to arrive at a program to seek improvement or adjust for such individual situations. Any determination made following such consultation shall be in writing and will be subject to the grievance procedure.

e. Time worked on related jobs will be given credited weight in establishing the rate of pay of a successful job bidder.

93. The following learning periods have been agreed upon: Labor Grade No. 10—no learning period, Labor Grade No. 9—no learning period, Labor Grade No. 8—learning period maximum three (3) months, Labor Grade No. 7 through No. 2—learning period will be the average time specified by the National Metal Trades Association as "experience" in their job descriptions. Where the actual average develops to a fraction of a month the next higher month will be used as the maximum period of learning time. Employees hired as learners in any job falling in Labor Grade No. 8 may be hired at not more than five cents ($.05) below the minimum rate for this labor grade. Employees hired as learners in jobs falling in Labor Grade No. 7 through No. 2 may be hired at a rate which will allow an increase of five cents ($.05) per hour for each six (6) months or portion thereof of learning period below the minimum rate of said labor grade. The Company agrees to furnish to the Union at the end of each month, the names of all employees hired or transferred as learners during that month.

94. a. The night shift premiums (above the regular hourly rate of pay) shall be seventeen cents ($.17) per hour.

b. When an operation is scheduled to work on a three (3) shift basis as provided for in Paragraph 15 a., the employee on the third (3rd) shift shall receive eight (8) hours pay for such seven (7) hour shift. Such employees shall also receive the night premium as noted in Paragraph 94 a. above.

c. The night shift premium will be applied to those hours in excess of ten (10) which are worked by a first shift employee in any one (1) work day.

95. a. In those cases where a Bargaining Unit employee is selected by the Company to be sent outside the home plant to the location of a customer, for the purpose of installing, repairing, or otherwise servicing Buffalo Forge Company manufactured equipment at the customer's plant location, he will be paid a Temporary Rate equivalent to the Maximum Rate of Labor Grade 2 (or the corresponding C.W.S. Job Class, when applicable) for the applicable hours of payment during the time he is away from the home plant.

b. If an employee, on such service call, travels during his regularly scheduled shift, he shall be paid for such travel time as occurs during his normal shift. The Company will make a reasonable effort to schedule travel during the employee's normal work schedule.

c. It is agreed that this arrangement in no manner will be the basis of any grievance with respect to the scheduling, or assigning of such work, or the activities of the Outside Servicemen of the Company who are explicitly excluded from the Bargaining Unit as stated in Paragraph 3.

96. When an employee exercises his seniority to bump to another job due to lack of work and is recalled to his original job within less than fourteen (14) calendar days, then his rate on the original job shall apply to the period of time he was off the original job.

97. If an employee requests work other than his own, the rate for the job to which such employee is assigned shall apply. It is understood that the said employee shall be returned to his former job when it becomes available. This paragraph does not apply to bidding.

98. The Payroll Department shall notify and discuss with an employee the method of deducting any wage overpayment he may have received before the deduction is made.

SECTION XIV
DESCRIPTION AND CLASSIFICATION OF JOBS

99. A job evaluation program will be developed during the term of this Agreement based on the Basic Steel C.W.S. Plan dated January 1, 1953, with such modifications as may be mutually agreed to by the Company and the Union to make the Plan applicable to the operations of Buffalo Forge Company.

100. Effective October 1, 1972, the Company shall continue to provide fifteen and four-tenths cents ($.154) per hour paid to any bargaining unit employees to be committed for the sole purpose of establishing a wage structure based on and to be applied to the C.W.S. Job Evaluation Program that the parties develop, which will result in an increment between job classes which will be equal.

101. The Company and the Union shall each designate three (3) representatives to a Top Job Evaluation Committee to implement the Job Evaluation Program and to describe and classify jobs in accordance with the provisions of that program. The Top Job Evaluation Committee shall include a representative appointed by Local Union 1874 and a representative appointed by the International Union, and a representative appointed by Local

24

Union 3732. The Top Job Evaluation Committee shall be assisted by a local committee consisting of three (3) representatives designated by the Company and three (3) representatives designated by the Local Union.

102. The C.W.S. Job Evaluation Program and Manual shall become effective and be installed concurrently with the Standard Hour Incentive System, referred to in Section XII of this Agreement, in accordance with the procedure set forth in Section XIV of this Agreement.

SECTION XV
SAFETY AND HEALTH

103. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protecting devices, wearing apparel, and other equipment necessary to protect employees from injury shall be provided by the Company in accordance with the practice now prevailing. The employees will and the Union shall see to it that their members make continuous use of such devices and equipment furnished for their protection.

104. In the interest of jointly promoting an effective Safety Program, the following procedures shall be in effect:

a. The Union shall provide the Company's Safety Director with the names of a Safety Chairman from each of Plant No. 1 and Plant No. 2 and its appointed representatives from each of the Foundry, Machine Shop, Sheet Metal Shop, Service Divisions and Plant No. 2. There will be one (1) representative from each of these designated areas to serve on the Shop Safety Committee.

b. The representative from each area will accompany the corresponding foreman from his area during the monthly safety inspection tour. The Company's Safety Director will hold a monthly safety meeting with the Local Union's Safety Chairman and Safety Representatives of Plant No. 1 and Plant No. 2 respectively, to review and establish priority of safety suggestions resulting from the inspection tour.

c. If at any time other than a normal inspection, these representatives, including a Union Safety Sub-Chairman have concern as to a safety or health hazard, they will bring such condition or practices to the attention of the Foreman or, in his absence, the Superintendent of the department involved.

d. If the condition is believed to be one of an acutely hazardous nature, they may also after notifying the Foreman or Superintendent, notify the Company's Safety Director. Immediately after consultation with the appropriate Superintendent, the Company's Safety Director will give direct notification to the Union's Safety Chairman or Sub-Chairman involved, and may suspend an operation pending further evaluation or correction.

e. In the event that a condition, which involves an accident or health hazard, remains uncorrected for an unreasonable period of time, this may become the subject of a discussion among the Company's Safety Director, Plant Manager and Union Representatives and may become the subject of a policy grievance under the grievance procedure. While the Company recognizes and the Union acknowledges that it is the Company's obligation to provide an effective Safety Program, the Union and its members will abide by and support all safety and health rules and regulations.

f. At the time of outside safety inspection tours, the Local Union Safety Chairman will have the opportunity of conferring with the inspector.

g. The Company shall continue its participation program concerning the purchase of safety glasses.

h. The Company shall pay an allowance of six dollars ($6.00) per pair toward the price of safety shoes purchased through the Payroll Deduction program. If the employee purchases safety shoes from another source he will be reimbursed for fifty per-cent (50%) of the cost up to a maximum allowance of six dollars ($6.00) per pair. These allowances will apply to the employee's initial pair of shoes, and replacements upon receipt of his old shoes.

SECTION XVI
COMPENSABLE INJURY

105. The following allowances shall be paid in event of compensable injuries suffered while in the employ of Buffalo Forge Company.

a. In the event an employee suffers a severe injury on the job, and the Plant Industrial Nurse refers him to the hospital or to an outside physician for treatment, he will be paid at his base rate for the time he is away from the plant on the day he reports the injury for such treatment. If the employee remains confined to the hospital, or if the treating physician provides a statement that the employee is not capable of continuing to work due to the injury, the employee will be paid at his base rate for the balance of his scheduled shift on the day of the accident.

(1.) The Company will provide transportation on the day of an injury, for outside treatment, to the injured employees who are unable to drive their own car or who do not have their own car available to them.

b. If the employee is sent from the Company Medical Department for additional treatment or if the employee makes an appointment for authorized treatment during his shift hours because of his physician not having office hours outside the employee's regular shift, the employee will be paid at his base rate for the time it is necessary for him to be away from the plant. In the latter case, the employee will make the appointment within the last hour of his work schedule, if possible. He will submit verification of the visits for treatment to the Plant Industrial Nurse on a form provided by the Company.

c. An employee summoned to appear before the New York State Workmen's Compensation Board, during his regularly scheduled shift, for a hearing relevant to an injury incurred while in the employ of Buffalo Forge Company, will receive up to four (4) hours off with pay at his base rate for the purpose of attending said hearing. The employee must be in the active employ of the Buffalo

Forge Company and the hearing scheduled during his working hours for this section to apply. The employee is to make application for payment to the Personnel Office, presenting his Notice of Hearing from the Workmen's Compensation Board, and have notation on the form from the Insurance Carrier Representative confirming his presence at the hearing.

(1) If the employee has a morning hearing, he will not be required to report to work at his normal starting time but may proceed directly to the Compensation Hearing. He will receive four (4) hours pay for time lost due to his attendance at the hearing, upon reporting into work at conclusion of the lunch period.

(2) If the employee is working a schedule which starts prior to 8:00 a.m., he will have the option of reporting into work at his scheduled starting time; after which, the Company will pay up to a maximum of four (4) hours for time lost due to his attendance at the Compensation Hearing.

(3) In the event of an afternoon hearing, the employee will be able to leave work after lunch and will not be required to return to work that day following the hearing; in which case he will receive four (4) hours pay for time lost due to his attendance at the hearing.

(4) In the event a second shift employee is to attend an afternoon compensation hearing, he will be compensated for the time lost if the hearing interferes with his getting into work at his normal starting time.

d. The Company Safety Director will promptly notify the Union Compensation Chairman of lost time accidents and the Union Compensation Chairman may request copies of the compensation accident reports submitted to the State Workmen's Compensation Board (form C-2).

SECTION XVII
INSURANCE PROGRAM

106. a. An Insurance Program Booklet, describing benefits of the plan, will be identified as "Exhibit A" and will become part of this Agreement. The booklet is

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to be updated to include the changes in insurance benefits which have been agreed to by both parties. Upon its approval, the said booklet will be distributed to all employees.

b. During the life of this Agreement, the Company will pay the full cost (including any increase in premium) to maintain the benefits described.

c. The Insurance program, provisions for eligibility and statements of limitations in effect on September 30, 1972, is to be continued through the life of this Agreement, subject to the following changes, which are a complete statement of all amendments to the Insurance Program during the life of this Agreement.

(1) Life Insurance

(a) The life insurance coverage for all active employees, who have established eligibility for life insurance coverage will be Six Thousand Dollars ($6,000.00), life insurance coverage for all such employees, and for such employees as may subsequently become eligible for life insurance coverage.

(b) Accidental death and dismemberment coverage will be provided including double indemnity coverage, Twelve Thousand Dollars ($12,000.00) in the event of the accidental death of the employee on or after that date.

(c) During the term of this Agreement, an employee whose continuous service with the Company is broken by reason of his retirement under the Pension Agreement, and an employee who retires under the Deferred Disability or Total and Permanent Disability pension provisions of the Pension Agreement, will be covered, beginning the first of the month that his normal pension becomes payable, with life insurance in the amount of one thousand five hundred dollars ($1,500.00). In the event an employee, prior to age sixty (60) becomes totally and permanently disabled, payment to him of the face amount of his insurance coverage as an active employee

in "Disability-Installments" under the insurance contract provisions, will be in lieu of the one thousand five hundred dollars ($1,500.00) coverage.

(2) Blue Cross-Blue Shield Benefits

(a) The Company will continue to pay the required premiums to provide Blue Cross - Blue Shield Coverage (Classes 4, 6 and 50, 51 and Extended Benefits Coverage as described in Form XBR-2-R10 dated January 15, 1965).

(b) Effective February 1, 1973, for those employees covered by the Blue Cross-Blue Shield benefits described in paragraph (a) above, the Company will pay the required premium to provide the Blue Cross Drug Prescription Rider ($1.00 Co-Pay per prescription).

(3) Continuation of Insurance Coverage

Continuance of life insurance and Blue Cross - Blue Shield coverage (including the Drug Prescription Plan) will be provided on the following revised schedule by payment of the appropriate premium by the Company if the employee ceases active work because of:

(a) Disability due to any cause; coverage will be continued for a period of two (2) years.

(b) Lay-off coverage will be continued for a period of six (6) months if the employee, at time of lay-off, had two (2) or more years of seniority.

(c) Authorized leave of absence; coverage will be continued for a period of sixty (60) calendar days.

(4) Weekly Sick and Accident Benefits

(a) Effective October 1, 1972, the sickness and accident benefit shall increase to Seventy-five Dollars ($75.00) per week.

(b) Effective October 1, 1973, this benefit shall increase to Eighty Dollars ($80.00) per week.

(c) Effective October 1, 1974, this benefit shall increase to Eighty-five Dollars ($85.00) per week.

(d) Such benefits shall be paid independently of any vacation or holiday pay to which the employee is entitled.

SECTION XVIII
PENSIONS

107. The Pension Agreement, as amended is hereby incorporated and made part of this Agreement and shall remain in effect during the term of this Agreement, subject to obtaining the necessary corporate and United States Treasury Department approval.

The following is a brief description only of those changes in pension benefits which are to be incorporated in the Pension Agreement, as amended:

a. **Effective October 1, 1973:**

(1) Increase the pension benefit to Six Dollars ($6.00) per month for each year of continuous service up to a maximum of thirty-five (35) years continuous service;

(2) The monthly pension benefit of those employees who retired during the term of this Agreement, between October 1, 1972 and September 30, 1973, shall become payable at the Six Dollar ($6.00) benefit level.

b. **Effective October 1, 1974:**

(1) Increase the pension benefit to Six Dollars Fifty Cents ($6.50) per month for each year of continuous service, up to a maximum of thirty-five (35) years continuous service, for those employees whose retirement occurs on or after October 1, 1974.

SECTION XIX
DEATH IN THE IMMEDIATE FAMILY

108. a. An employee who suffers a death in his "immediate family", upon notifying his supervisor, will be granted a paid leave of absence of three (3) consecutive days, which may include Saturday and Sunday.

The three (3) day period shall include the day of the funeral. "Immediate family" shall mean the employee's spouse, mother, father, son, daughter or legally adopted son or daughter, full brother and full sister, mother-in-law and father-in-law.

b. An employee shall also be granted, upon notifying his supervisor, the day of the funeral off with pay, in the event of the death of his grandparents.

c. The employee shall be compensated for such time off not to exceed eight (8) times his base hourly rate of pay for each of the three (3) days of bereavement leave.

SECTION XX
JURY DUTY

109. a. All employees having completed their probationary period and who are called for Jury Duty, will be paid the following: The difference between the employee's base rate and his Jury Duty allowance. A maximum of eight (8) hours pay allowance will be made in any one (1) day for a maximum of fifteen (15) days within a one (1) year period. However, if the employee is summoned to serve as a Grand Juror, this allowance shall be limited to the number of days of Jury Duty served within a period of sixty (60) calendar days starting from the first day of such Grand Juror service.

b. The employee will notify his supervisor as promptly as possible after receiving his jury notice and at the conclusion of his service, will present to the Company a voucher certifying to the number of days which were served as a juror. Upon presentation of this evidence, the Company will pay the above Jury Duty allowance.

c. This section does not apply to any employee who volunteers to serve.

SECTION XXI
SUB-CONTRACTING POLICY

110. The Company will give first consideration to have members of the Local Union continue to perform

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work which is normally assigned to members of this Bargaining Unit, before sub-letting work to outside contractors. If after due consideration the Company deems it advisable to sub-contract such work, the Company will discuss the sub-letting of the work with two (2) representatives of the Local Union before letting a contract.

SECTION XXII
BULLETIN BOARDS

111. The Company will furnish the Union with a billboard at each existing Clock House location for the purpose of accommodating notices in regard to Union affairs. Postings shall be limited to:

a. Union meeting notices.
b. Union election notices, and for results of elections.
c. Names of Union appointments.
d. Notices of official Union business.
e. Notices of Union sponsored recreational or social activities.

SECTION XXIII
REOPENING AND TERMINATION

112. This Agreement shall continue in full force and effect until midnight, September 28, 1975, and from year to year thereafter unless sixty (60) days prior to an expiration date, either party notifies the other in writing by registered mail of its desire to terminate the Agreement in which event the Agreement shall terminate on the expiration date of the year in which the notice is given.

113. Sixty (60) days prior to an expiration date, either party may notify the other, in writing, by registered mail, of its desire to amend or change the Agreement. If the parties are unable to agree upon the proposed amendment or changes on or before the expiration date of the contract, then this Agreement and/or this Agreement as modified, shall remain in full effect until a further written notice is served by either party on the other terminating this Agreement.

114. The parties agree that meaningful discussions shall commence immediately after execution of this Agreement and be continued as necessary during the term of this Agreement, regarding a C.W.S. Job Evaluation Program and a Standard Hourly Incentive System. When the parties have reached agreement on the specified subject matters, all provisions of this Agreement shall be in full force and effect. There shall be incorporated herein the new agreements of the parties and this Agreement, as so modified, shall then continue in full force and effect until September 28, 1975.

Dated at Buffalo, New York, this 9th day of January, 1973.

BUFFALO FORGE COMPANY
Milton A. Bender

UNITED STEELWORKERS OF AMERICA—AFL-CIO

I. W. Abel
Walter J. Burke
Joseph P. Molony
Mitchel F. Mazuca
Robert A. Klinshaw

COMMITTEE: LOCAL No. 1874

Stanley Grey
Valentine F. Zizzi
Aloysius B. Mazur
Michael J. Donofrio
Leon G. Urbaniak
Val Olejniczak
Robert W. Laskowski
Dominic S. Palmeri
Eugene L. Gawron

RULES OF CONDUCT

Violation of the following rules, which are not all inclusive, will be considered sufficient causes for discharge:

Absence

Repeated absence from work or repeated tardiness from work without permission or without acceptable excuse.

Dishonesty

Stealing, making fraudulent records and requisitions for material, punching another employee's time cards, gambling on Company property, etc. Violations of any penal law particularly with respect to carrying concealed weapons, fighting or attempting bodily injury to another.

Health

Harboring a disease or condition which on account of his own carelessness may endanger fellow employees or others.

Intemperance

Possession or consumption of intoxicating liquors on Company property or reporting for work under the influence of liquor in any degree.

Insubordination

Willful and intentional refusal of employees to follow instructions or to perform designated work where such instruction or work normally or probably falls within the authority of his supervisor.

Maliciousness

Malicious waste or destruction of Company or a fellow workman's property, or the intentional handicapping of a fellow workman, or the hiding of tools or the delaying of work.

Smoking

It is to be understood that these smoking rules must be rigidly enforced and the following penalties for violation will be enforced:

NO SMOKING will be permitted at anytime in the lavatories or wash rooms.

NO SMOKING will be permitted within thirty (30) feet of a Paint Spray Booth, Dip Tank, or Paint Shop.

NO SMOKING will be permitted at any time in the Office Building, in the Box Shop, Dept. 370, in the Foundry Carpenter Shop, in the Foundry Pattern Loft, in the Carpenter Shop, Dept. 190 and in the Pattern Shop, Dept. 340.

NO SMOKING will be permitted in areas which are not in operation.

NO SMOKING will be permitted between 4:00 P.M. and 4:30 P.M. and during the last thirty (30) minutes of a scheduled work shift and until the employee has left the premises.

Two blasts of the shop wash-up signal will indicate the thirty (30) minute period prior to close of work shift.

Any employee found smoking while working at his regular place of work but in a restricted area or during a prohibited period will for the first offense receive a penalty lay-off of one (1) day. For the second offense a penalty lay-off of three (3) days. For the third offens discharge.

Any employee found smoking while not at his place of work, or in any of the restricted areas or during a prohibited period will for the first offense receive a penalty lay-off of three (3) days. For the second offense discharge.

The above penalties will be in addition to whatever time may be lost on the day the violation occurs.

All areas in the plant will be carefully checked and all violations will receive penalties according to the above schedule.

Signs and receptacles will be placed at the entrance to all prohibited smoking areas.

It is definitely understood employees will continue with their normal work while smoking.

If, in the opinion of the Management, the employees take unfair advantage of the smoking privilege, it will be withdrawn.

Solicitations and Collections

Solicitations and collections for any reason whatsoever, is prohibited on the premises unless prior approval is had from the Plant Manager or his representative.

PROPERTY OF

Name_____

Address_____

EXHIBIT B OMITTED

7168473503 MGM TDMT BUFFALO N...

ZIP 14204

western union Mailgram

THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

BUFFALO FORGE CO BENDER
490 BROADWAY
BUFFALO NY 14204

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7168473503 NL TDMT BUFFALO NY 101 11-20 0608P EST
MS VALENTINE OLEJMICZAK, DLR
3 ANDREWS PL
CHEEKTOWAGA NY 14225

THERE ARE CONFIRMED REPORTS THAT LOCAL NUMBER 1874 THROUGH IT'S STEWARDS AND OTHER REPRESENTATIVES IS PREPARING TO ENGAGE IN A WORK STOPPAGE WHICH WOULD BE IN VIOLATION OF PARAGRAPH 14B OF THE AGREEMENT BETWEEN THE STEEL WORKERS AND THE BUFFALO FORGE COMPANY
PLEASE HAVE THE LOCAL OFFICERS RETRACT THIS PLAN IMMEDIATELY AND ADVISE ALL EMPLOYEES OFTHER OBLIGATIONS UNDER PARAGRAPH 14B THROUGH WRITTEN AND ORAL COMMUNICATIONS
THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE WHICH HAS CAUSED THIS REPORTED ACTION
YOUR COOPERATION IN THIS MATTER WILL BE APPRECIATED
D N STEWART VICE PRESIDENTS MANUFACTURING BUFFALO FORGE CO

1811 EST

MGMBUFB BUF

EXHIBIT C

REPLY BY MAILGRAM - SEE REVERSE SIDE FOR WESTERN UNION'S TOLL-FREE PHONE NUMBERS

2-037372E324002 11/20/74
ICS IPMMTZZ CSP
1 7168473503 MGM TDMT BUFFALO NY 11-20 0607P EST
ZIP 14204

western union Mailgram

THIS MAILGRAM WAS TRANSMITTED ELECTRONICALLY BY WESTERN UNION TO A POST OFFICE NEAR YOU FOR DELIVERY

BUFFALO FORGE CO BENDER
490 BROADWAY
BUFFALO NY 14204

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7168473503 NL TDMT BUFFALO NY 101 11-20 0607P EST
PMS VALENTINE ZIZZI, DLR
25 LIND AVE
WEST SENECA NY 14224

THERE ARE CONFIRMED REPORTS THAT LOCAL NUMBER 1874 THROUGH IT'S STEWARDS AND OTHER REPRESENTATIVES IS PREPARING TO ENGAGE IN A WORK STOPPAGE WHICH WOULD BE IN VIOLATION OF PARAGRAPH 14B OF THE AGREEMENT BETWEEN THE STEEL WORKERS AND THE BUFFALO FORGE COMPANY
PLEASE HAVE THE LOCAL OFFICERS RETRACT THIS PLAN IMMEDIATELY AND ADVISE ALL EMPLOYEES OFTHER OBLIGATIONS UNDER PARAGRAPH 14B THROUGH WRITTEN AND ORAL COMMUNICATIONS
THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE WHICH HAS CAUSED THIS REPORTED ACTION
YOUR COOPERATION IN THIS MATTER WILL BE APPRECIATED
D N STEWART VICE PRESIDENTS MANUFACTURING BUFFALO FORGE CO

1809 EST

MGMBUFA BUF

MGMBUFC BUF
2-037538E324002 11/20/74
ICS IPMMTZZ CSP
1 7168473503 MGM TDMT BUFFALO

Mailgram

ZIP 14204

BUFFALO FORGE CO BENDER
490 BROADWAY
BUFFALO NY 14204

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7168473503 NL TDMT BUFFALO NY 101 11-20 0610P EST
PMS MITCHELL MAZUCA, DISTRICT DIRECTOR, DLR
UNITED STEEL WORKERS OF AMERICA 688 MAIN ST
BUFFALO NY 14202

THERE ARE CONFIRMED REPORTS THAT LOCAL NUMBER 1874 THROUGH IT'S STEWARDS AND OTHER REPRESENTATIVES IS PREPARING TO ENGAGE IN A WORK STOPPAGE WHICH WOULD BE IN VIOLATION OF PARAGRAPH 14B OF THE AGREEMENT BETWEEN THE STEEL WORKERS AND THE BUFFALO FORGE COMPANY
PLEASE HAVE THE LOCAL OFFICERS RETRACT THIS PLAN IMMEDIATELY AND ADVISE ALL EMPLOYEES OF THER OBLIGATIONS UNDER PARAGRAPH 14B THROUGH WRITTEN AND ORAL COMMUNICATIONS
THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE WHICH HAS CAUSED THIS REPORTED ACTION
YOUR COOPERATION IN THIS MATTER WILL BE APPRECIATED
D N STEWART VICE PRESIDENTS MANUFACTURING BUFFALO FORGE CO

1812 EST

MGMBUFC BUF

MGMBUFB BUF
2-022578E322002 11/18/74
ICS IPMMTZZ CSP
1 7166931850 MGM TDMT NORTH TONOWANDA NY 11-18 0231P EST
ZIP 14120

western union Mailgram

WALLACE YOUNGS
874 OLIVER ST
NORTH TONOWANDA NY 14120

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7166931850 TDMT NORTH TONOWANDA NY 63 11-18 0231P EST
PMS MITCHELL F MAZUCA, UNITED STEELWORKERS OF AMERICA, DLR
688 MAIN ST
BUFFALO NY 14202

LOCAL NUMBER 3732 IS ENGAGED IN A WORK STOPPAGE WHICH IS A VIOLATION OF PARAGRAPH 13B OF THE AGREEMENT BETWEEN THE LOCAL AND BUFFALO PUMPS DIVISION OF BUFFALO FORGE. PLEASE HAVE THE LOCAL CEASE VIOLATING THE AGREEMENT IMMEDIATELY. THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE CAUSING THE WORK STOPPAGE.
WALLACE YOUNGS, PLANT MGR

1433 EST

MGMBUFB BUF

EXHIBIT D

MGMBUFD BUF
<2-022650E322002 11/18/74
ICS IPMMTZZ CSP
1 7166931850 MGM TDMT NORTH TONOWANDA NY 11-18 0231P EST
ZIP 14120

western union Mailgram

UNITED SERVICE

WALLACE YOUNGS
874 OLIVER ST
NORTH TONOWANDA NY 14120

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

7166931850 TDMT NORTH TONOWANDA NY 63 11-18 0231P EST
PMS ROBERT A CLENSHAW, UNITED STEELWORKERS OF AMERICA, DLR
688 MAIN ST
BUFFALO NY 14202

LOCAL NUMBER 3732 IS ENGAGED IN A WORK STOPPAGE WHICH IS A VIOLATION OF PARAGRAPH 13B OF THE AGREEMENT BETWEEN THE LOCAL AND BUFFALO PUMPS DIVISION OF BUFFALO FORGE. PLEASE HAVE THE LOCAL CEASE VIOLATING THE AGREEMENT IMMEDIATELY. THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE CAUSING THE WORK STOPPAGE.
WALLACE YOUNGS, PLANT MGR

1434 EST

MGMBUFD BUF
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Phone: (412) 562-2400

United Steelworkers of America
AFL-CIO-CLC
FIVE GATEWAY CENTER, PITTSBURGH, PA. 15222

March 20, 1975

Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

Re: Buffalo Forge Company v. United Steelworkers of America, et al., No. 74-2698

Dear Sir:

Enclosed for filing please find twenty-five (25) copies of "Brief for Appellees" in the above referenced case.

Two copies of the Brief were sent on this day by certified mail to the counsel indicated below.

Sincerely yours,

Rudolph L. Milasich, Jr.

Rudolph L. Milasich, Jr.
Assistant General Counsel.

RLM/ejm
Enclosures

cc: Jeremy V. Cohen, Esq.
Charles E. Cooney, Jr., Esq.
Thomas P. McMahon, Esq.

Phone: (412) 562-2400

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